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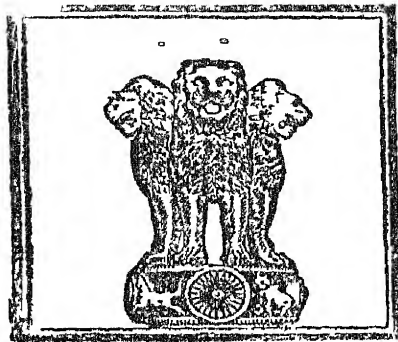
GOVERNMENT OF INDIA
MINISTRY OF LAW

THE
UNREPEALED CENTRAL ACTS

WITH
CHRONOLOGICAL TABLE AND INDEX

VOLUME III
From 1882 to 1897, both inclusive

(SECOND EDITION)



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PREFACE.

This Volume has been prepared on the same lines as the previous edition published by the Reforms office in 1938. The Acts included in this Volume have been printed as modified up to the 1st July 1948, but opportunity has been taken to print the General Clauses Act, 1897 (X of 1897), as modified upto the 5th June, 1950.

K. V. K. SUNDARAM, I.C.S.,
Secretary, Ministry of Law,
Government of India.

NEW DELHI ;
The 1st. July, 1950.

LIST OF ABBREVIATIONS USED.

A O 1937	.	.	.	.	for Government of India (Adaptation of Indian Laws) Order, 1937, as modified by the Government of India (Adaptation of Indian Laws) Supplementary Order, 1937, and the Government of India (Adaptation of Indian Laws) (Amendment) Order, 1940
A O 1947					„ India (Adaptation of Existing Indian Laws) Order, 1947.
A O 1948					„ Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1948
B & O					„ Bihar and Orissa
Ben	.	.	.	.	„ Bengal
Bom	.	.	.	.	„ Bombay
Ch	.	.	.	.	„ Chapter
Cl	.	.	.	.	„ Clause
Coll Stat					„ Collection of Statutes relating to India
C P	.	.	.	.	„ Central Provinces
Gen R & O					„ General Statutory Rules and Orders.
G G in C					„ Governor General in Council
G of I	.	.	.	.	„ Government of India.
Govt	.	.	.	.	„ Government.
Ins	.	.	.	.	„ Inserted
L G	.	.	.	.	„ Local Government.
Mad	.	.	.	.	„ Madras
Pt	.	.	.	.	„ Part
Pun	.	.	.	.	„ Punjab.
Reg	.	.	.	.	„ Regulation.
Rep	.	.	.	.	„ Repealed
S	.	.	.	.	„ Section
Sch	.	.	.	.	„ Schedule.
Subs	.	.	.	.	„ Substituted
U P	„ United Provinces.

CHRONOLOGICAL TABLE OF THE UNREPEALED CENTRAL ACTS, 1882—1897.

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	IV	The Transfer of Property Act, 1882 .	33
	V	The Indian Easements Act, 1882	95
	VII	The Powers-of-Attorney Act, 1882	118
	XV	The Presidency Small Cause Courts Act, 1882	120
	XIX	The Punjab University Act, 1882	Not printed ¹
	XXI	The Madras Forest (Validation) Act, 1882	150
1883	VIII	The Little Cocos and Preparis Islands Laws Act, 1883	Not printed ²
	X	Bikrama Singh's Estates Act, 1883	151
	XII	The British Burma Pilots Act, 1883 .	Not printed ²
	XIII	The Indus Valley State Railway Lands	Not printed ¹
	XIX	The Land Improvement Loans Act, 1883	154
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	IV	The Indian Explosives Act, 1884	194
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	XIX	The Rangoon Waterworks Act, 1884	Not printed ²
1885	VII	The Panch Mahals Laws Act, 1885 .	202
	VIII	The Bengal Tenancy Act, 1885 .	Not printed ³
	XIII	The Indian Telegraph Act, 1885	204
	XVIII	The Land Acquisition (Mines) Act, 1885	219
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	VI	The Births, Deaths and Marriages Registration Act, 1886 .	231
	IX	The Deo Estate Act, 1886	Not printed ⁴

¹ Act relates to Pakistan

² Act relates to Burma

³ Relates to tenancy See Ben and B & O Codes, Vol I

⁴ Practically obsolete

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	IX	The Provincial Small Cause Courts Act, 1887	278
	XI	The Sindh-Pishin Railway Act, 1887	Not printed ¹
	XII	The Bengal, Agra and Assam Civil Courts Act, 1887	293
	XVI	The Punjab Tenancy Act, 1887	Not printed ²
	XVII	The Punjab Land-revenue Act, 1887	Not printed ³
	XIX	King of Oudh's Estate	301
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¹ Act relates to Pakistan

² Relates to tenary *See* Punjab Code, Vol. I.

³ Relates to land revenue *See ibid*

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1892	II	The Marriage Validation Act, 1892	442
	V	The Bengal Military Police Act, 1892	443
	VII	The Madras City Civil Court Act, 1892	449
	VIII	The Lansdowne Bridge Act, 1892	Not printed ¹
	X	The Government Management of Private Estates Act, 1892	453
1893	II	The Porahat Estate Act, 1893	455
	III	The Government Tenants (North-West Frontier Province) Act, 1893	Not printed ¹
	IV	The Partition Act, 1893	456
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	XV	The Engineers' Certificates Validation Act, 1894	510
	II	The Burma Boundaries Act Amendment Act, 1895	Not printed ²
	X	The Indian Railway Companies Act, 1895	511
1895	XI	The Pegu and Tenasserim Validation Act, 1895	Not printed ²
	XV	The Crown Grants Act, 1895	513
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	XX	The Sindh Incumbered Estates Act, 1896	Not printed ¹
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¹ Act relates to Pakistan² Act relates to Burma

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THE
UNREPEALED CENTRAL ACTS
VOLUME III.

THE INDIAN TRUSTS ACT, 1882.

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THE SCHEDULE

Act No II of 1882.¹

[13th January, 1882]

An Act to define and amend the law relating to Private Trusts and Trustees

WHEREAS it is expedient to define and amend the law relating to private trusts and trustees ; It is hereby enacted as follows — Preamble

CHAPTER I.

PRELIMINARY

1. This Act may be called the Indian Trusts Act, 1882. and it shall come into force on the first day of March, 1882. Short title
Commence-
ment

^{which} [It extends to ~~the~~ ^{State of Jammu & Kashmir and} the Provinces of India, except the Andaman and Nicobar Islands and Panth Piploda, but the Central Government may, from time to time, by notification in the Official Gazette, extend it to ~~either or both of the said Provinces~~ or to any part thereof] But nothing herein contained affects the rules of Muhammadan law as to *wagf*, or the mutual relations of the members of an undivided family as determined by any customary or personal law, or applies to public or private religious or charitable endowments, or to trusts to distribute prizes taken in war Local extent

Savings

¹ For Report of the Indian Law Commission on the Private Trusts Bill which they were instructed to consider among others, see Gazette of India, 1880, Supplement, p. 104, and for the Statement of Objects and Reasons, see Gazette of India, 1880, Pt V, p. 476 ; for Report of the Select Committee, see *ibid.*, Supplement, 1881, p. 766 ; for further Report of the Select Committee, see *ibid.*, Supplement, 1882, p. 67 ; for Proceedings in Council, see *ibid.*, Supplement, 1881, p. 687, and *ibid.*, Supplement, 1882, p. 68

The Act has been extended to Berar by the Berar Laws Act, 1941 (4 of 1941)

² Subs. by the A. O. 1948 for the original words as amended by the A. O. 1937.

(Chapter I—Preliminary Chapter II—Of the Creation of Trusts)

among the captors, and nothing in the second Chapter of this Act applies to trusts created before the said day

Repeal of enactments

2. The Statute and Acts mentioned in the Schedule hereto annexed shall, to the extent mentioned in the said Schedule, be repealed, in the territories to which this Act for the time being extends

Interpretation clause—"trust"

3. A "trust" is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner.

"author of the trust"

"trustee"

"beneficiary"

"trust-property"

"beneficial interest"

"instrument of trust"

"breach of trust"

the person who reposes or declares the confidence is called the "author of the trust" the person who accepts the confidence is called the "trustee": the person for whose benefit the confidence is accepted is called the "beneficiary" the subject-matter of the trust is called "trust-property" or "trust-money" the "beneficial interest" or "interest" of the beneficiary is his right against the trustee as owner of the trust-property, and the instrument, if any, by which the trust is declared is called the "instrument of trust".

a breach of any duty imposed on a trustee, as such, by any law for the time being in force, is called a "breach of trust"

"registered"

"notice"

Expressions defined in Act IX of 1872

and in this Act, unless there be something repugnant in the subject or context, "registered" means registered under the law for the registration of documents for the time being in force a person is said to have "notice" of a fact either when he actually knows that fact, or when, but for wilful abstention from inquiry or gross negligence, he would have known it, or when information of the fact is given to or obtained by his agent, under the circumstances mentioned in the Indian Contract Act, 1872, section 229; and all expressions used herein and defined in the Indian Contract Act, 1872, shall be deemed to have the meanings respectively attributed to them by that Act

CHAPTER II.

OF THE CREATION OF TRUSTS.

Lawful purpose

4. A trust may be created for any lawful purpose. The purpose of a trust is lawful unless it is (a) forbidden by law, or (b) is of such a nature that, if permitted, it would defeat the provisions of any law, or (c) is fraudulent, or (d) involves or implies injury to the person or property of another, or (e) the Court regards it as immoral or opposed to public policy.

Every trust of which the purpose is unlawful is void And where a trust is created for two purposes, of which one is lawful and the other unlawful, and the two purposes cannot be separated, the whole trust is void.

(Chapter II —Of the Creation of Trusts)

Explanation —In this section the expression “law” includes, where the trust-property is immoveable and situate in a foreign country, the law of such country

Illustrations

(a) A conveys property to B in trust to apply the profits to the nurture of female foundlings to be trained up as prostitutes The trust is void

(b) A bequeaths property to B in trust to employ it in carrying on a smuggling business, and out of the profits thereof to support A's children The trust is void

(c) A, while in insolvent circumstances, transfers property to B in trust for A during his life, and after his death for B A is declared an insolvent The trust for A is invalid as against his creditors

5. No trust in relation to immoveable property is valid unless declared by a non-testamentary instrument in writing signed by the author of the trust or the trustee and registered, or by the will of the author of the trust or of the trustee Trust of immoveable property

No trust in relation to moveable property is valid unless declared as aforesaid, or unless the ownership of the property is transferred to the trustee Trust of moveable property

These rules do not apply where they would operate so as to effectuate a fraud.

6. Subject to the provisions of section 5, a trust is created when the author of the trust indicates with reasonable certainty by any words or acts (a) an intention on his part to create thereby a trust, (b) the purpose of the trust, (c) the beneficiary, and (d) the trust-property, and (unless the trust is declared by will or the author of the trust is himself to be the trustee) transfers the trust-property to the trustee. Creation of trust

Illustrations

(a) A bequeaths certain property to B, “having the fullest confidence that he will dispose of it for the benefit of C” This creates a trust so far as regards A and C

(b) A bequeaths certain property to B, “hoping he will continue it in the family”. This does not create a trust, as the beneficiary is not indicated with reasonable certainty

(c) A bequeaths certain property to B, requesting him to distribute it among such members of C's family as B should think most deserving This does not create a trust, for the beneficiaries are not indicated with reasonable certainty

(d) A bequeaths certain property to B, desiring him to divide the bulk of it among C's children This does not create a trust, for the trust-property is not indicated with sufficient certainty.

(e) A bequeaths a shop and stock-in-trade to B, on condition that he pays A's debts and a legacy to C This is a condition, not a trust for A's creditors and C

7. A trust may be created—

(a) by every person competent to contract,¹ and,

(b) with the permission of a principal Civil Court of original jurisdiction, by or on behalf of a minor,

Who may create trusts

¹ See : 17 of the Indian Contract Act, 1872 (9 of 1872)

(Chapter II —Of the Creation of Trusts Chapter III —Of the Duties and Liabilities of Trustees)

but subject in each case to the law for the time being in force as to the circumstances and extent in and to which the author of the trust may dispose of the trust-property

Subject of trust

8. The subject-matter of a trust must be property transferable to the beneficiary

Who may be beneficiary

It must not be merely beneficial interest under a subsisting trust

Disclaimer by beneficiary

9. Every person capable of holding property may be a beneficiary.

A proposed beneficiary may renounce his interest under the trust by disclaimer addressed to the trustee, or by setting up, with notice of the trust, a claim inconsistent therewith

Who may be trustee

10. Every person capable of holding property may be a trustee, but, where the trust involves the exercise of discretion, he cannot execute it unless he is competent to contract

No one bound to accept trust

No one is bound to accept a trust

Acceptance of trust

A trust is accepted by any words or acts of the trustee indicating with reasonable certainty such acceptance

Disclaimer of trust

Instead of accepting a trust, the intended trustee may, within a reasonable period, disclaim it, and such disclaimer shall prevent the trust-property from vesting in him

A disclaimer by one of two or more co-trustees vests the trust-property in the other or others, and makes him or them sole trustee or trustees from the date of the creation of the trust

Illustrations

(a) A bequeaths certain property to B and C, his executors, as trustees for D. B and C prove A's will. This is in itself an acceptance of the trust, and B and C hold the property in trust for D.

(b) A transfers certain property to B in trust to sell it and to pay out of the proceeds A's debts. B accepts the trust and sells the property. So far as regards B, a trust of the proceeds is created for A's creditors.

(c) A bequeaths a lakh of rupees to B upon certain trusts and appoints him his executor. B severs the lakh from the general assets and appropriates it to the specific purpose. This is an acceptance of the trust.

CHAPTER III.

OF THE DUTIES AND LIABILITIES OF TRUSTEES.

Trustee to execute trust

11. The trustee is bound to fulfil the purpose of the trust, and to obey the directions of the author of the trust given at the time of its creation, except as modified by the consent of all the beneficiaries being competent to contract

Where the beneficiary is incompetent to contract, his consent may, for the purposes of this section, be given by a principal Civil Court of original jurisdiction.

(Chapter III —Of the Duties and Liabilities of Trustees)

Nothing in this section shall be deemed to require a trustee to obey any direction when to do so would be impracticable, illegal or manifestly injurious to the beneficiaries

Explanation —Unless a contrary intention be expressed, the purpose of a trust for the payment of debts shall be deemed to be (a) to pay only the debts of the author of the trust existing and recoverable at the date of the instrument of trust, or, when such instrument is a will, at the date of his death, and (b) in the case of debts not bearing interest, to make such payment without interest

Illustrations

(a) A, a trustee, is simply authorized to sell certain land by public auction. He cannot sell the land by private contract

(b) A, a trustee of certain land for X, Y and Z, is authorized to sell the land to B for a specified sum. X, Y and Z, being competent to contract, consent that A may sell the land to C for a less sum. A may sell the land accordingly

(c) A, a trustee for B and her children, is directed by the author of the trust to lend, on B's request, trust-property to B's husband, C, on the security of his bond. C becomes insolvent and B requests A to make the loan. A may refuse to make it

12. A trustee is bound to acquaint himself, as soon as possible, with the nature and circumstances of the trust-property, to obtain, where necessary, a transfer of the trust-property to himself, and (subject to the provisions of the instrument of trust) to get in trust-moneys invested on insufficient or hazardous security

Trustee to inform himself of state of trust-property

Illustrations

(a) The trust-property is a debt outstanding on personal security. The instrument of trust gives the trustee no discretionary power to leave the debt so outstanding. The trustee's duty is to recover the debt without unnecessary delay

(b) The trust-property is money in the hands of one of two co-trustees. No discretionary power is given by the instrument of trust. The other co-trustee must not allow the former to retain the money for a longer period than the circumstances of the case required

13. A trustee is bound to maintain and defend all such suits, and (subject to the provisions of the instrument of trust) to take such other steps as, regard being had to the nature and amount or value of the trust-property, may be reasonably requisite for the preservation of the trust-property and the assertion or protection of the title thereto

Trustee to protect title to trust-property

Illustration

The trust-property is immoveable property which has been given to the author of the trust by an unregistered instrument. Subject to the provisions of the Indian Registration Act, 1877,¹ the trustee's duty is to cause the instrument to be registered

14. The trustee must not for himself or another set up or aid any title to the trust-property adverse to the interest of the beneficiary.

Trustee not to set up title adverse to beneficiary.

¹ See now the Indian Registration Act, 1908 (16 of 1908).

(Chapter III—Of the Duties and Liabilities of Trustees)

Care required
from trustee

15 A trustee is bound to deal with the trust-property as carefully as a man of ordinary prudence would deal with such property if it were his own, and, in the absence of a contract to the contrary, a trustee so dealing is not responsible for the loss, destruction or deterioration of the trust-property

Illustrations

(a) A, living in Calcutta, is a trustee for B, living in Bombay. A remits trust-funds to B by bills drawn by a person of undoubted credit in favour of the trustee as such, and payable at Bombay. The bills are dishonoured. A is not bound to make good the loss.

(b) A, a trustee of leasehold property, directs the tenant to pay the rents on account of the trust to a banker, B, then in credit. The rents are accordingly paid to B, and A leaves the money with B only till wanted. Before the money is drawn out, B becomes insolvent. A, having had no reason to believe that B was in insolvent circumstances, is not bound to make good the loss.

(c) A, a trustee of two debts for B, releases one and compounds the other, in good faith, and reasonably believing that it is for B's interest to do so. A is not bound to make good any loss caused thereby to B.

(d) A, a trustee directed to sell the trust-property by auction, sells the same, but does not advertise the sale and otherwise fails in reasonable diligence in inviting competition. A is bound to make good the loss caused thereby to the beneficiary.

(e) A, a trustee for B, in execution of his trust, sells the trust-property, but from want of due diligence on his part fails to receive part of the purchase-money. A is bound to make good the loss thereby caused to B.

(f) A, a trustee for B of a policy of insurance, has funds in hand for payment of the premiums. A neglects to pay the premiums, and the policy is consequently forfeited. A is bound to make good the loss to B.

(g) A bequeaths certain moneys to B and C as trustees, and authorizes them to continue trust-moneys upon the personal security of a certain firm in which A had himself invested them. A dies and a change takes place in the firm. B and C must not permit the moneys to remain upon the personal security of the new firm.

(h) A, a trustee for B, allows the trust to be executed solely by his co-trustee C. C misapplies the trust-property. A is personally answerable for the loss resulting to B.

Conversion
of perishable
property

16. Where the trust is created for the benefit of several persons in succession, and the trust-property is of a wasting nature or a future or reversionary interest, the trustee is bound, unless an intention to the contrary may be inferred from the instrument of trust, to convert the property into property of a permanent and immediately profitable character.

Illustrations

(a) A bequeaths to B all his property in trust for C during his life, and on his death for D, and on D's death for E. A's property consists of three leasehold houses, and there is nothing in A's will to show that he intended the houses to be enjoyed in specie. B should sell the houses, and invest the proceeds in accordance with section 20.

(b) A bequeaths to B his three leasehold houses in Calcutta and all the furniture therein in trust for C during his life, and on his death for D, and on D's death for E. Here an intention that the houses and furniture should be enjoyed in specie appears clearly, and B should not sell them.

(Chapter III—Of the Duties and Liabilities of Trustees)

17. Where there are more beneficiaries than one, the trustee is bound to be impartial, and must not execute the trust for the advantage of one at the expense of another Trustee to be impartial

Where the trustee has a discretionary power, nothing in this section shall be deemed to authorize the Court to control the exercise reasonably and in good faith of such discretion

Illustration

A, a trustee for B, C and D, is empowered to choose between several specified modes of investing the trust-property. A in good faith chooses one of these modes. The Court will not interfere, although the result of the choice may be to vary the relative rights of B, C and D.

18. Where the trust is created for the benefit of several persons in succession and one of them is in possession of the trust-property, if he commits, or threatens to commit, any act which is destructive or permanently injurious thereto, the trustee is bound to take measures to prevent such act Trustee to prevent waste

19. A trustee is bound (a) to keep clear and accurate accounts of the trust-property, and (b), at all reasonable times, at the request of the beneficiary, to furnish him with full and accurate information as to the amount and state of the trust-property Accounts a information

20. Where the trust-property consists of money and cannot be applied immediately or at an early date to the purposes of the trust, the trustee is bound (subject to any direction contained in the instrument of trust) to invest the money on the following securities, and on no others — Investment of trust-money

(a) in promissory notes, debentures, stock or other securities ¹[of any ²[~~Provincial~~ Government] or] of the ³[Central Government], or of the United Kingdom of Great Britain and Ireland.

⁴[Provided that securities, both the principal whereof and the interest whereon shall have been fully and unconditionally guaranteed by any such Government, shall be deemed, for the purposes of this clause, to be securities of such Government],

(b) in bonds, debentures and annuities ⁵[charged or secured by the ~~Imperial Parliament~~ ⁶[before the fifteenth day of August, 1947] on the revenues of India or of the ⁷[~~Governor-General~~ in Council] or of any ~~Province~~ ⁸State]

⁸[Provided that, after the fifteenth day of February, 1916, no money shall be invested in any such annuity being a terminable annuity unless a sinking fund has been established in connec-

¹ Ins by the Repealing and Amending Act, 1920 (31 of 1920), s 2 and Sch I

² Subs by the A O 1937 for "L G"

³ Subs by the A O 1937 for "G of I"

⁴ Ins by the Indian Trusts (Amendment) Act, 1934 (18 of 1934), s 2

⁵ Subs by the A O 1937 for "charged by the Imperial Parliament on the revenues of India"

⁶ Ins by the A O 1948

⁷ Subs by the A O 1948 for "Federation"

⁸ Ins by the Indian Trusts (Amendment) Act, 1916 (1 of 1916), s 2

(Chapter III —Of the Duties and Liabilities of Trustees)

tion with such annuity, but nothing in this proviso shall apply to investments made before the date aforesaid],

- ¹[(bb) in India three and a half per cent stock, India three per cent stock, India two and a half per cent stock or any other capital stock which ~~may at any time hereafter be issued by the Secretary of State for India in Council under the authority of an Act of Parliament and charged on the revenues of India]~~ ^{but not the 15th day August 1947, and in the United Kingdom} ^{was} ²[or which may be issued by the Secretary of State on behalf of the Governor-General in Council under the provisions of Part XIII of the Government of India Act, 1935],

26 Geo
5, Ch 2

- (c) in stock or debentures of, or shares in, Railway or other Companies the interest whereon shall have been guaranteed by the Secretary of State for India in Council ¹[or by the "[Central Government]] ²[or in debentures of the Bombay ³[Provincial] Co-operative Bank, Limited, the interest whereon shall have been guaranteed, by the Secretary of State for India in Council] ²[or the ~~Provincial~~ ^{State} Government of Bombay],

- ⁴[(d) in debentures or other securities for money issued, under the authority of ⁵[any Central Act or ~~Act]~~ ^{planned} ~~of a Legislature established in~~ ⁶[a Province], ⁷by or on behalf of any municipal body, port trust or city improvement trust in any Presidency-town, or in Rangoon Town, or by or on behalf of the trustees of the port of Karachi,]

- ⁸[Provided that after the 31st day of March, 1948, no money shall be invested in any securities issued by or on behalf of a municipal body, port trust or city improvement trust in Rangoon town, or by or on behalf of the trustees of the port of Karachi.]

- (e) on a first mortgage of immoveable property situate in ~~any Province of India]~~ ⁹Provided that the property is not a leasehold for a term of years and that the value of the property exceeds by one-third, or, if consisting of buildings, exceeds by one-half, the mortgage-money, or

- (f) on any other security expressly authorized by the instrument of trust, or by any rule which the High Court may from time to time prescribe in this behalf

¹ Ins by the Indian Trusts (Amendment) Act, 1916 (1 of 1916), s 2

² Ins by the A O 1937

³ Subs by the A O 1937 for "G of I"

⁴ Ins by the Indian Trusts (Amendment) Act, 1917 (21 of 1917), s. 2

⁵ Subs by the Repealing and Amending Act, 1925 (37 of 1925), s 2 and Sch I for "Central"

⁶ Subs by the Indian Trusts (Amendment) Act, 1908 (3 of 1908), s 2, for the original clause

⁷ Subs by the A O 1948 for "any Act"

⁸ Subs by the A O 1948 for "British India"

⁹ Ins by the A O 1948.

(Chapter III—Of the Duties and Liabilities of Trustees)

Provided that, where there is a person competent to contract and entitled in possession to receive the income of the trust-property for his life, or for any greater estate, no investment on any security mentioned or referred to in clauses (d), (e), and (f) shall be made without his consent in writing

¹[20A. (1) A trustee may invest in any of the securities mentioned or referred to in section 20, notwithstanding that the same may be redeemable and that the price exceeds the redemption value

Power to purchase redeemable stock at a premium

Provided that a trustee may not purchase at a price exceeding its redemption value any security mentioned or referred to in clauses (c) and (d) of section 20 which is liable to be redeemed within fifteen years of the date of purchase at par or at some other fixed rate, or purchase any such security as is mentioned or referred to in the said clauses which is liable to be redeemed at par or at some other fixed rate at a price exceeding fifteen per centum above par or such other fixed rate.

(2) A trustee may retain until redemption any redeemable stock, fund or security which may have been purchased in accordance with this section]

21 Nothing in section 20 shall apply to investments made before this Act comes into force, or shall be deemed to preclude an investment on a mortgage of immoveable property already pledged as security for an advance under the Land Improvement Act, 1871², or, in case the trust-money does not exceed three thousand rupees, a deposit thereof in a Government Savings Bank

Mortgage of land pledged to Government under Act XXVI of 1871
Deposit in Government Savings Bank

22. Where a trustee directed to sell within a specified time extends such time, the burden of proving, as between himself and the beneficiary, that the latter is not prejudiced by the extension lies upon the trustee, unless the extension has been authorized by a principal Civil Court of original jurisdiction

Sale by trustee directed to sell within specified time.

Illustration

A bequeaths property to B, directing him with all convenient speed and within five years to sell it, and apply the proceeds for the benefit of C. In the exercise of reasonable discretion, B postpones the sale for six years. The sale is not thereby rendered invalid, but C, alleging that he has been injured by the postponement, institutes a suit against B to obtain compensation. In such suit the burden of proving that C has not been injured lies on B.

23. Where the trustee commits a breach of trust, he is liable to make good the loss which the trust-property or the beneficiary has thereby sustained, unless the beneficiary has by fraud induced the trustee to commit the breach, or the beneficiary, being competent to contract, has himself, without coercion or undue influence having been brought to bear on him, concurred in the breach, or subsequently acquiesced therein, with full knowledge of the facts of the case and of his rights as against the trustee

Liability for breach of trust

¹ Ins. by the Indian Trusts (Amendment) Act, 1916 (1 of 1916), s. 3

² See now the Land Improvement Loans Act, 1883 (19 of 1883)

(Chapter III —Of the Duties and Liabilities of Trustees)

A trustee committing a breach of trust is not liable to pay interest except in the following cases —

- (a) where he has actually received interest
- (b) where the breach consists in unreasonable delay in paying trust-money to the beneficiary
- (c) where the trustee ought to have received interest, but has not done so
- (d) where he may be fairly presumed to have received interest

He is liable, in case (a), to account for the interest actually received, and, in cases (b), (c) and (d), to account for simple interest at the rate of six per cent per annum, unless the Court otherwise directs

(e) Where the breach consists in failure to invest trust-money and to accumulate the interest or dividends thereon, he is liable to account for compound interest (with half-yearly rests) at the same rate

(f) Where the breach consists in the employment of trust-property or the proceeds thereof in trade or business, he is liable to account, at the option of the beneficiary, either for compound interest (with half-yearly rests) at the same rate, or for the nett profits made by such employment.

Illustrations

(a) A trustee improperly leaves trust-property outstanding, and it is consequently lost he is liable to make good the property lost, but he is not liable to pay interest thereon

(b) A bequeaths a house to B in trust to sell it and pay the proceeds to C B neglects to sell the house for a great length of time, whereby the house is deteriorated and its market price falls B is answerable to C for the loss

(c) A trustee is guilty of unreasonable delay in investing trust-money in accordance with section 20, or in paying it to the beneficiary The trustee is liable to pay interest thereon for the period of the delay

(d) The duty of the trustee is to invest trust-money in any of the securities mentioned in section 20, clause (a), (b), (c) or (d) Instead of so doing, he retains the money in his hands He is liable, at the option of the beneficiary, to be charged either with the amount of the principal money and interest, or with the amount of such securities as he might have purchased with the trust-money when the investment should have been made, and the intermediate dividends and interest thereon

(e) The instrument of trust directs the trustee to invest trust-money either in any such securities or on mortgage of immoveable property The trustee does neither He is liable for the principal money and interest

(f) The instrument of trust directs the trustee to invest trust-money in any of such securities and to accumulate the dividends thereon The trustee disregards the direction He is liable, at the option of the beneficiary, to be charged either with the amount of the principal money and compound interest, or with the amount of such securities as he might have purchased with the trust-money when the investment should have been made, together with the amount of the accumulation which would have arisen from a proper investment of the intermediate dividends

(g) Trust-property is invested in one of the securities mentioned in section 20, clause (a), (b), (c) or (d) The trustee sells such security for some purpose not authorized by the terms of the instrument of trust He is liable, at the option of the beneficiary, either to replace the security with the intermediate dividends and interest thereon, or to account for the proceeds of the sale with interest thereon

(Chapter III —Of the Duties and Liabilities of Trustees)

(h) The trust-property consists of land. The trustee sells the land to a purchaser for a consideration without notice of the trust. The trustee is liable, at the option of the beneficiary, to purchase other land of equal value to be settled upon the like trust, or to be charged with the proceeds of the sale with interest.

24. A trustee who is liable for a loss occasioned by a breach of trust in respect of one portion of the trust-property cannot set off against his liability a gain which has accrued to another portion of the trust-property through another and distinct breach of trust.

No set-off
allowed to
trustee

25. Where a trustee succeeds another, he is not, as such, liable for the acts or defaults of his predecessor.

Non-liability
for prede-
cessor's
default

26. Subject to the provisions of sections 13 and 15, one trustee is not, as such, liable for a breach of trust committed by his co-trustee.

Non-liability
for co-trustee's
default

Provided that, in the absence of an express declaration to the contrary in the instrument of trust, a trustee is so liable—

(a) where he has delivered trust-property to his co-trustee without seeing to its proper application

(b) where he allows his co-trustee to receive trust-property and fails to make due enquiry as to the co-trustee's dealings therewith or allows him to retain it longer than the circumstances of the case reasonably require

(c) where he becomes aware of a breach of trust committed or intended by his co-trustee, and either actively conceals it or does not, within a reasonable time take proper steps to protect the beneficiary's interest

A co-trustee who joins in signing a receipt for trust-property and proves that he has not received the same is not answerable, by reason of such signature only, for loss or misapplication of the property by his co-trustee.

Joining in
receipt for
conformity

Illustration

A bequeaths certain property to B and C, and directs them to sell it and invest the proceeds for the benefit of D. B and C accordingly sell the property, and the purchase-money is received by B and retained in his hands. C pays no attention to the matter for two years, and then calls on B to make the investment. B is unable to do so, becomes insolvent, and the purchase-money is lost. C may be compelled to make good the amount.

27. Where co-trustees jointly commit a breach of trust, or where one of them by his neglect enables the other to commit a breach of trust, each is liable to the beneficiary for the whole of the loss occasioned by such breach.

Several liabi-
lity of co-
trustees.

But as between the trustees themselves, if one be less guilty than another and has had to refund the loss, the former may compel the latter, or his legal representative to the extent of the assets he has received, to make good such loss, and, if all be equally guilty, any one or more of the

Contribution
as between
co-trustees

(Chapter III —Of the Duties and Liabilities of Trustees Chapter IV —
Of the Rights and Powers of Trustees)

trustees who has had to refund the loss may compel the others to contribute

Nothing in this section shall be deemed to authorize a trustee who has been guilty of fraud to institute a suit to compel contribution

Non-liability of trustee paying without notice of transfer by beneficiary

28. When any beneficiary's interest becomes vested in another person, and the trustee, not having notice of the vesting, pays or delivers trust-property to the person who would have been entitled thereto in the absence of such vesting, the trustee is not liable for the property so paid or delivered

Liability of trustee where beneficiary's interest is forfeited to the Crown

29. When the beneficiary's interest is forfeited or awarded by legal adjudication ¹[to the ~~Crown~~ ^{Govt}], the trustee is bound to hold the trust-property to the extent of such interest for the benefit of such person in such manner as ²[the ~~Provincial Government~~ ^{State}] may direct in this behalf.

Indemnity of trustees

30. Subject to the provisions of the instrument of trust and of sections 23 and 26, trustees shall be respectively chargeable only for such moneys, stocks, funds and securities as they respectively actually receive and shall not be answerable the one for the other of them, nor for any banker, broker or other person in whose hands any trust-property may be placed, nor for the insufficiency or deficiency of any stocks, funds or securities, nor otherwise for involuntary losses

CHAPTER IV.

OF THE RIGHTS AND POWERS OF TRUSTEES.

Right to title-deed

31. A trustee is entitled to have in his possession the instrument of trust and all the documents of title (if any) relating solely to the trust-property

Right to reimbursement of expenses

32. Every trustee may reimburse himself, or pay or discharge out of the trust-property, all expenses properly incurred in or about the execution of the trust, or the realization, preservation or benefit of the trust-property, or the protection or support of the beneficiary.

If he pays such expenses out of his own pocket, he has a first charge upon the trust-property for such expenses and interest thereon; but such charge (unless the expenses have been incurred with the sanction of a principal Civil Court of original jurisdiction) shall be enforced only by prohibiting any disposition of the trust-property without previous payment of such expenses and interest

If the trust-property fail, the trustee is entitled to recover from the beneficiary personally on whose behalf he acted, and at whose request, expressed or implied, he made the payment, the amount of such expenses.

¹ Subs by the A O 1937 for "to Govt"

² Subs by the A. O. 1937 for "the Govt."

(Chapter IV —Of the Rights and Powers of Trustees)

Where a trustee has by mistake made an over-payment to the beneficiary, he may reimburse the trust-property out of the beneficiary's interest. If such interest fail, the trustee is entitled to recover from the beneficiary personally the amount of such over-payment.

Right to be
recouped for
erroneous
over-paymen

33 A person other than a trustee who has gained an advantage from a breach of trust must indemnify the trustee to the extent of the amount actually received by such person under the breach, and where he is a beneficiary the trustee has a charge on his interest for such amount.

Right to in-
demnify for
gainer by
breach of
trust

Nothing in this section shall be deemed to entitle a trustee to be indemnified who has, in committing the breach of trust, been guilty of fraud.

34. Any trustee may, without instituting a suit, apply by petition to a principal Civil Court of original jurisdiction for its opinion, advice or direction on any present questions respecting the management or administration of the trust-property other than questions of detail, difficulty or importance, not proper in the opinion of the Court for summary disposal.

Right to
apply to Court
for opinion
in manage-
ment of trust
property

A copy of such petition shall be served upon, and the hearing thereof may be attended by, such of the persons interested in the application as the Court thinks fit.

The trustee stating in good faith the facts in such petition and acting upon the opinion, advice or direction given by the Court shall be deemed, so far as regards his own responsibility, to have discharged his duty as such trustee in the subject-matter of the application.

The costs of every application under this section shall be in the discretion of the Court to which it is made.

35. When the duties of a trustee, as such, are completed, he is entitled to have the accounts of his administration of the trust-property examined and settled, and, where nothing is due to the beneficiary under the trust, to an acknowledgment in writing to that effect.

Right to
settlement
of accounts

36. In addition to the powers expressly conferred by this Act and by the instrument of trust, and subject to the restrictions, if any, contained in such instrument, and to the provisions of section 17, a trustee may do all acts which are reasonable and proper for the realization, protection or benefit of the trust-property, and for the protection or support of a beneficiary who is not competent to contract.

General
authority of
trustee

1* * * * *

Except with the permission of a principal Civil Court of original jurisdiction, no trustee shall lease trust-property for a term exceeding twenty-one years from the date of executing the lease, nor without reserving the best yearly rent that can be reasonably obtained.

¹ The second paragraph of this section was rep. by the Amending Act, 1891 (12 of 1891), s. 2 and Sch. I.

(Chapter IV —Of the Rights and Powers of Trustees)

Power to sell
in lots, and
either by
public auc-
tion or private
contract

37. Where the trustee is empowered to sell any trust-property, he may sell the same subject to prior charges or not, and either together or in lots, by public auction or private contract, and either at one time or at several times, unless the instrument of trust otherwise directs

Power to sell
under special
conditions
Power to
buy in and
re-sell

38. The trustee making any such sale may insert such reasonable stipulations either as to title or evidence of title, or otherwise, in any conditions of sale or contract for sale, as he thinks fit, and may also buy in the property or any part thereof at any sale by auction, and rescind or vary any contract for sale, and re-sell the property so bought in, or as to which the contract is so rescinded, without being responsible to the beneficiary for any loss occasioned thereby

Time allowed
for selling
trust-
property

Where a trustee is directed to sell trust-property or to invest trust-money in the purchase of property, he may exercise a reasonable discretion as to the time of effecting the sale or purchase

Illustrations

(a) A bequeaths property to B, directing him to sell it with all convenient speed and pay the proceeds to C. This does not render an immediate sale imperative.

(b) A bequeaths property to B, directing him to sell it at such time and in such manner as he shall think fit and invest the proceeds for the benefit of C. This does not authorize B, as between him and C, to postpone the sale to an indefinite period.

Power to
convey

39. For the purpose of completing any such sale, the trustee shall have power to convey or otherwise dispose of the property sold in such manner as may be necessary.

Power to
vary invest-
ments

40. A trustee may, at his discretion, call in any trust-property invested in any security and invest the same on any of the securities mentioned or referred to in section 20, and from time to time vary any such investments for others of the same nature.

Provided that, where there is a person competent to contract and entitled at the time to receive the income of the trust-property for his life, or for any greater estate, no such change of investment shall be made without his consent in writing.

Power to
apply pro-
perty of
minors, etc.,
for their main-
tenance, etc

41. Where any property is held by a trustee in trust for a minor, such trustee may, at his discretion, pay to the guardians (if any) of such minor, or otherwise apply for or towards his maintenance or education or advancement in life, or the reasonable expenses of his religious worship, marriage or funeral, the whole or any part of the income to which he may be entitled in respect of such property, and such trustee shall accumulate all the residue of such income by way of compound interest by investing the same and the resulting income thereof from time to time in any of the securities mentioned or referred to in section 20, for the benefit of the person who shall ultimately become entitled to the property from which such accumulations have arisen:

(Chapter IV —Of the Rights and Powers of Trustees)

Provided that such trustee may, at any time, if he thinks fit, apply the whole or any part of such accumulations as if the same were part of the income arising in the then current year

Where the income of the trust-property is insufficient for the minor's maintenance or education or advancement in life, or the reasonable expenses of his religious worship, marriage or funeral, the trustee may, with the permission of a principal Civil Court of original jurisdiction, but not otherwise, apply the whole or any part of such property for or towards such maintenance, education, advancement or expenses

Nothing in this section shall be deemed to affect the provisions of any local law for the time being in force relating to the persons and property of minors.

42. Any trustees or trustee may give a receipt in writing for any money, securities or other moveable property payable, transferable or deliverable to them or him by reason, or in the exercise, of any trust or power, and, in the absence of fraud, such receipt shall discharge the person paying, transferring or delivering the same therefrom, and from seeing to the application thereof, or being accountable for any loss or misapplication thereof Power to give receipts

43. Two or more trustees acting together may, if and as they think fit,— Power to compound, etc

- (a) accept any composition or any security for any debt or for any property claimed,
- (b) allow any time for payment of any debt,
- (c) compromise, compound, abandon, submit to arbitration or otherwise settle any debt, account, claim or thing whatever relating to the trust; and,
- (d) for any of those purposes, enter into, give, execute and do such agreements, instruments of composition or arrangement, releases and other things as to them seem expedient, without being responsible for any loss occasioned by any act or thing so done by them in good faith

The powers conferred by this section on two or more trustees acting together may be exercised by a sole acting trustee when by the instrument of trust, if any, a sole trustee is authorized to execute the trusts and powers thereof

This section applies only if and as far as a contrary intention is not expressed in the instrument of trust, if any, and shall have effect subject to the terms of that instrument and to the provisions therein contained

This section applies only to trusts created after this Act comes into force.

(Chapter IV—Of the Rights and Powers of Trustees Chapter V—
Of the Disabilities of Trustees)

Power to
several
trustees
of whom one
disclaims
or dies

44. When an authority to deal with the trust-property is given to several trustees and one of them disclaims or dies, the authority may be exercised by the continuing trustees, unless from the terms of the instrument of trust it is apparent that the authority is to be exercised by a number in excess of the number of the remaining trustees

Suspension
of trustee's
powers by
decree

45. Where a decree has been made in a suit for the execution of a trust, the trustee must not exercise any of his powers except in conformity with such decree, or with the sanction of the Court by which the decree has been made, or, where an appeal against the decree is pending, of the Appellate Court.

CHAPTER V.

OF THE DISABILITIES OF TRUSTEES.

Trustee can-
not renounce
after accept-
ance

46. A trustee who has accepted the trust cannot afterwards renounce it except (a) with the permission of a principal Civil Court of original jurisdiction, or (b) if the beneficiary is competent to contract, with his consent, or (c) by virtue of a special power in the instrument of trust

Trustee can-
not delegate

47. A trustee cannot delegate his office or any of his duties either to a co-trustee or to a stranger, unless (a) the instrument of trust so provides, or (b) the delegation is in the regular course of business, or (c) the delegation is necessary, or (d) the beneficiary, being competent to contract, consents to the delegation.

Explanation—The appointment of an attorney or proxy to do an act merely ministerial and involving no independent discretion is not a delegation within the meaning of this section

Illustrations

(a) A bequeaths certain property to B and C on certain trusts to be executed by them or the survivor of them or the assigns of such survivor. B dies. C may bequeath the trust-property to D and E upon the trusts of A's will

(b) A is a trustee of certain property with power to sell the same. A may employ an auctioneer to effect the sale

(c) A bequeaths to B fifty houses let at monthly rents in trust to collect the rents and pay them to C. B may employ a proper person to collect these rents

Co-trustees
cannot act
singly

48. When there are more trustees than one, all must join in the execution of the trust, except where the instrument of trust otherwise provides.

Control of
discretionary
power

49. Where a discretionary power conferred on a trustee is not exercised reasonably and in good faith, such power may be controlled by a principal Civil Court of original jurisdiction

Trustee may
not charge
for services

50. In the absence of express directions to the contrary contained in the instrument of trust or of a contract to the contrary entered into with

*(Chapter V —Of the Disabilities of Trustees Chapter VI —Of the
Rights and Liabilities of the Beneficiary)*

the beneficiary or the Court at the time of accepting the trust, a trustee has no right to remuneration for his trouble, skill and loss of time in executing the trust

Nothing in this section applies to any Official Trustee, Administrator General, Public Curator or person holding a certificate of administration

51. A trustee may not use or deal with the trust-property for his own profit or for any other purpose unconnected with the trust

Trustee may not use trust-property for his own profit

52. No trustee whose duty it is to sell trust-property, and no agent employed by such trustee for the purpose of the sale, may, directly or indirectly, buy the same or any interest therein, on his own account or as agent for a third person

Trustee for sale or his agent may not buy

53. No trustee, and no person who has recently ceased to be a trustee, may, without the permission of a principal Civil Court of original jurisdiction, buy or become mortgagee or lessee of the trust-property or any part thereof, and such permission shall not be given unless the proposed purchase, mortgage or lease is manifestly for the advantage of the beneficiary

Trustee may not buy beneficiary's interest without permission

And no trustee whose duty it is to buy or to obtain a mortgage or lease of particular property for the beneficiary may buy it, or any part thereof, or obtain a mortgage or lease of it, or any part thereof, for himself

Trustee for purchase

54. A trustee or co-trustee whose duty it is to invest trust-money on mortgage or personal security must not invest it on mortgage by, or on the personal security of, himself or one of his co-trustees

Co-trustees may not lend to one of themselves

CHAPTER VI

OF THE RIGHTS AND LIABILITIES OF THE BENEFICIARY

55. The beneficiary has, subject to the provisions of the instrument of trust, a right to the rents and profits of the trust-property

Rights to rents and profits

56. The beneficiary is entitled to have the intention of the author of the trust specifically executed to the extent of the beneficiary's interest,

Right to specific execution

and, where there is only one beneficiary and he is competent to contract, or where there are several beneficiaries and they are competent to contract and all of one mind, he or they may require the trustee to transfer the trust-property to him or them, or to such person as he or they may direct.

Right to transfer of possession

When property has been transferred or bequeathed for the benefit of a married woman, so that she shall not have power to deprive herself of her beneficial interest, nothing in the second clause of this section applies to such property during her marriage

(Chapter VI —Of the Rights and Liabilities of the Beneficiary)

Illustrations

(a) Certain Government securities are given to trustees upon trust to accumulate the interest until A attains the age of 24, and then to transfer the gross amount to him. A on attaining majority may, as the person exclusively interested in the trust-property, require the trustees to transfer it immediately to him.

(b) A bequeaths Rs 10,000 to trustees upon trust to purchase an annuity for B, who has attained his majority and is otherwise competent to contract. B may claim the Rs 10,000.

(c) A transfers certain property to B and directs him to sell or invest it for the benefit of C, who is competent to contract. C may elect to take the property in its original character.

Right to inspect and take copies of instrument of trust, accounts, etc

57. The beneficiary has a right, as against the trustee and all persons claiming under him with notice of the trust, to inspect and take copies of the instrument of trust, the documents of title relating solely to the trust-property, the accounts of the trust-property and the vouchers (if any) by which they are supported, and the cases submitted and opinions taken by the trustee for his guidance in the discharge of his duty.

Right to transfer beneficial interest

58. The beneficiary, if competent to contract, may transfer his interest, but subject to the law for the time being in force as to the circumstances and extent in and to which he may dispose of such interest.

Provided that when property is transferred or bequeathed for the benefit of a married woman, so that she shall not have power to deprive herself of her beneficial interest, nothing in this section shall authorize her to transfer such interest during her marriage.

Right to sue for execution of trust

59. Where no trustees are appointed or all the trustees die, disclaim, or are discharged, or where for any other reason the execution of a trust by the trustee is or becomes impracticable, the beneficiary may institute a suit for the execution of the trust, and the trust shall, so far as may be possible, be executed by the Court until the appointment of a trustee or new trustee.

Right to proper trustees

60. The beneficiary has a right (subject to the provisions of the instrument of trust) that the trust-property shall be properly protected and held and administered by proper persons and by a proper number of such persons.

Explanation I —The following are not proper persons within the meaning of this section —

A person domiciled abroad. an alien enemy a person having an interest inconsistent with that of the beneficiary a person in insolvent circumstances, and, unless the personal law of the beneficiary allows otherwise, a married woman and a minor.

Explanation II.—When the administration of the trust involves the receipt and custody of money, the number of trustees should be two at least.

*(Chapter VI—Of the Rights and Liabilities of the Beneficiary)**Illustrations*

(a) A, one of several beneficiaries, proves that B, the trustee, has improperly disposed of part of the trust property, or that the property is in danger from B's being in insolvent circumstances, or that he is incapacitated from acting as trustee A may obtain a receiver of the trust-property

(b) A bequeaths certain jewels to B in trust for C B dies during A's lifetime, then A dies C is entitled to have the property conveyed to a trustee for him

(c) A conveys certain property to four trustees in trust for B Three of the trustees die B may institute a suit to have three new trustees appointed in the place of the deceased trustees

(d) A conveys certain property to three trustees in trust for B All the trustees disclaim B may institute a suit to have three trustees appointed in place of the trustees so disclaiming

(e) A, a trustee for B, refuses to act, or goes to reside permanently out of ^{the} ~~the~~ *Province*, or is declared an insolvent, or compounds with his creditors, or suffers a co-trustee to commit a breach of trust B may institute a suit to have A removed and a new trustee appointed in his room

61. The beneficiary has a right that his trustee shall be compelled to perform any particular act of his duty as such, and restrained from committing any contemplated or probable breach of trust

Right to
compel to
any act of
duty

Illustrations

(a) A contracts with B to pay him monthly Rs 100 for the benefit of C B writes and signs a letter declaring that he will hold in trust for C the money so to be paid A fails to pay the money in accordance with his contract C may compel B on a proper indemnity to allow C to sue on the contract in B's name

(b) A is trustee of certain land, with a power to sell the same and pay the proceeds to B and C equally A is about to make an improvident sale of the land B may sue on behalf of himself and C for an injunction to restrain A from making the sale

62. Where a trustee has wrongfully bought trust-property, the beneficiary has a right to have the property declared subject to the trust or retransferred by the trustee, if it remains in his hands unsold, or, if it has been bought from him by any person with notice of the trust, by such person But in such case the beneficiary must repay the purchase-money paid by the trustee, with interest, and such other expenses (if any) as he has properly incurred in the preservation of the property, and the trustee or purchaser must (a) account for the nett profits of the property, (b) be charged with an occupation-rent, if he has been in actual possession of the property, and (c) allow the beneficiary to deduct a proportionate part of the purchase-money if the property has been deteriorated by the acts or omissions of the trustee or purchaser

Wrongful
purchase by
trustee.

Nothing in this section—

(a) impairs the rights of lessees and others who, before the institution of a suit to have the property declared subject to the trust or retransferred, have contracted in good faith with the trustee or purchaser, or

(b) entitles the beneficiary to have the property declared subject to the trust or retransferred where he, being competent to con-

(Chapter VI—Of the Rights and Liabilities of the Beneficiary)

tract, has himself, without coercion or undue influence having been brought to bear on him, ratified the sale to the trustee with full knowledge of the facts of the case and of his rights as against the trustee

Following trust-property—into the hands of third persons,* into that into which it has been converted

63. Where trust-property comes into the hands of a third person inconsistently with the trust, the beneficiary may require him to admit formally, or may institute a suit for a declaration, that the property is comprised in the trust

Where the trustee has disposed of trust-property and the money or other property which he has received therefor can be traced in his hands, or the hands of his legal representative or legatee, the beneficiary has, in respect thereof, rights as nearly as may be the same as his rights in respect of the original trust-property

Illustrations

(a) A, a trustee for B of Rs 10,000, wrongfully invests the Rs 10,000 in the purchase of certain land. B is entitled to the land

(b) A, a trustee, wrongfully purchases land in his own name, partly with his own money, partly with money subject to a trust for B. B is entitled to a charge on the land for the amount of the trust-money so misemployed

Saving of rights of certain transferees

64. Nothing in section 63 entitles the beneficiary to any right in respect of property in the hands of—

(a) a transferee in good faith for consideration without having notice of the trust, either when the purchase-money was paid, or when the conveyance was executed, or

(b) a transferee for consideration from such a transferee

A judgment-creditor of the trustee attaching and purchasing trust-property is not a transferee for consideration within the meaning of this section

Nothing in section 63 applies to money, currency notes and negotiable instruments in the hands of a *bonâ fide* holder to whom they have passed in circulation, or shall be deemed to affect the Indian Contract Act, 1872, or section 108, or the liability of a person to whom a debt or charge is transferred

Acquisition by trustee of trust-property wrongfully converted

65. Where a trustee wrongfully sells or otherwise transfers trust-property and afterwards himself becomes the owner of the property, the property again becomes subject to the trust, notwithstanding any want of notice on the part of intervening transferees in good faith for consideration

Right in case of blended property

66. Where the trustee wrongfully mingles the trust-property with his own, the beneficiary is entitled to a charge on the whole fund for the amount due to him.

(Chapter VI —Of the Rights and Liabilities of the Beneficiary Chapter
VII —Of Vacating the Office of Trustee)

67. If a partner, being a trustee, wrongfully employs trust-property in the business, or on the account of the partnership, no other partner is liable therefor in his personal capacity to the beneficiaries, unless he had notice of the breach of trust.

Wrongful employment by partner-trustee of trust-property for partnership purposes

The partners having such notice are jointly and severally liable for the breach of trust

Illustrations

(a) A and B are partners. A dies, having bequeathed all his property to B in trust for Z, and appointed B his sole executor. B, instead of winding up the affairs of the partnership, retains all the assets in the business. Z may compel him, as partner, to account for so much of the profits as are derived from A's share of the capital. B is also answerable to Z for the improper employment of A's assets.

(b) A, a trader, bequeaths his property to B in trust for C, appoints B his sole executor, and dies. B enters into partnership with X and Y in the same trade, and employs A's assets in the partnership-business. B gives an indemnity to X and Y against the claims of C. Here X and Y are jointly liable with B to C as having knowingly become parties to the breach of trust committed by B.

68. Where one of several beneficiaries—

Liability of beneficiary joining in breach of trust

(a) joins in committing breach of trust, or

(b) knowingly obtains any advantage therefrom, without the consent of the other beneficiaries, or

(c) becomes aware of a breach of trust committed or intended to be committed, and either actually conceals it, or does not within a reasonable time take proper steps to protect the interests of the other beneficiaries, or

(d) has deceived the trustee and thereby induced him to commit a breach of trust,

the other beneficiaries are entitled to have all his beneficial interest impounded as against him and all who claim under him (otherwise than as transferees for consideration without notice of the breach) until the loss caused by the breach has been compensated.

When property has been transferred or bequeathed for the benefit of a married woman, so that she shall not have power to deprive herself of her beneficial interest, nothing in this section applies to such property during her marriage.

69. Every person to whom a beneficiary transfers his interest has the rights, and is subject to the liabilities, of the beneficiary in respect of such interest at the date of the transfer.

Rights and liabilities of beneficiary's transferee

CHAPTER VII.

OF VACATING THE OFFICE OF TRUSTEE.

70. The office of a trustee is vacated by his death or by his discharge from his office.

Office how vacated

(Chapter VII—Of Vacating the Office of Trustee)

Discharge of trustee

71. The trustee may be discharged from his office only as follows:—

- (a) by the extinction of the trust ,
- (b) by the completion of his duties under the trust ,
- (c) by such means as may be prescribed by the instrument of trust ,
- (d) by appointment under this Act of a new trustee in his place ,
- (e) by consent of himself and the beneficiary, or, where there are more beneficiaries than one, all the beneficiaries being competent to contract, or
- (f) by the Court to which a petition for his discharge is presented under this Act

Petition to be discharged from trust

72. Notwithstanding the provisions of section II, every trustee may apply by petition to a principal Civil Court of original jurisdiction to be discharged from his office , and, if the Court finds that there is sufficient reason for such discharge, it may discharge him accordingly, and direct his costs to be paid out of the trust-property. But, where there is no such reason, the Court shall not discharge him, unless a proper person can be found to take his place

Appointment of new trustees on death, etc

73. Whenever any person appointed a trustee disclaims, or any trustee, either original or substituted, dies, or is for a continuous period of six months absent from ^{India}~~the Provinces~~, or leaves ^{India}~~the Provinces~~ for the purpose of residing abroad, or is declared an insolvent, or desires to be discharged from the trust, or refuses or becomes, in the opinion of a principal Civil Court of original jurisdiction, unfit or personally incapable to act in the trust, or accepts an inconsistent trust, a new trustee may be appointed in his place by—

- (a) the person nominated for that purpose by the instrument of trust (if any), or
- (b) if there be no such person, or no such person able and willing to act, the author of the trust if he be alive and competent to contract, or the surviving or continuing trustees or trustee for the time being, or legal representative of the last surviving and continuing trustee, or (with the consent of the Court) the retiring trustees, if they all retire simultaneously, or (with the like consent) the last retiring trustee

Every such appointment shall be by writing under the hand of the person making it

On an appointment of a new trustee the number of trustees may be increased

The Official Trustee may, with his consent and by the order of the Court, be appointed under this section, in any case in which only one trustee is to be appointed and such trustee is to be the sole trustee.

¹ Subs by the A. O. 1948 for "British India".

(Chapter VII —Of Vacating the Office of Trustee Chapter VIII —Of
the Extinction of Trusts)

The provisions of this section relative to a trustee who is dead include the case of a person nominated trustee in a will but dying before the testator, and those relative to a continuing trustee include a refusing or retiring trustee if willing to act in the execution of the power.

74. Whenever any such vacancy or disqualification occurs and it is found impracticable to appoint a new trustee under section 73, the beneficiary may, without instituting a suit, apply by petition to a principal Civil Court of original jurisdiction for the appointment of a trustee or a new trustee, and the Court may appoint a trustee or a new trustee accordingly Appointment
by Court

In appointing new trustees, the Court shall have regard (a) to the wishes of the author of the trust as expressed in or to be inferred from the instrument of trust, (b) to the wishes of the person, if any, empowered to appoint new trustees; (c) to the question whether the appointment will promote or impede the execution of the trust; and (d) where there are more beneficiaries than one, to the interests of all such beneficiaries Rules for
selecting new
trustees

75. Whenever any new trustee is appointed under section 73 or section 74, all the trust-property for the time being vested in the surviving or continuing trustees or trustee, or in the legal representative of any trustee, shall become vested in such new trustee, either solely or jointly with the surviving or continuing trustees or trustee, as the case may require Vesting of
trust-pro-
perty in new
trustees

Every new trustee so appointed, and every trustee appointed by a Court, either before or after the passing of this Act, shall have the same powers, authorities and discretions, and shall in all respects act, as if he had been originally nominated a trustee by the author of the trust Powers of
new trustees

76. On the death or discharge of one of several co-trustees, the trust survives and the trust-property passes to the others, unless the instrument of trust expressly declares otherwise Survival of
trust

CHAPTER VIII

OF THE EXTINCTION OF TRUSTS.

77. A trust is extinguished—

- (a) when its purpose is completely fulfilled, or
- (b) when its purpose becomes unlawful, or
- (c) when the fulfilment of its purpose becomes impossible by destruction of the trust-property or otherwise, or
- (d) when the trust, being revocable, is expressly revoked

Trust how
extinguished.

78. A trust created by will may be revoked at the pleasure of the testator, Revocation
of trust

(Chapter VIII —Of the Extinction of Trusts Chapter IX —Of certain Obligations in the Nature of Trusts)

A trust otherwise created can be revoked only—

- (a) where all the beneficiaries are competent to contract—by their consent ,
- (b) where the trust has been declared by a non-testamentary instrument or by word of mouth—in exercise of a power of revocation expressly reserved to the author of the trust , or
- (c) where the trust is for the payment of the debts of the author of the trust, and has not been communicated to the creditors—at the pleasure of the author of the trust

Illustration

A conveys property to B in trust to sell the same and pay out of the proceeds the claims of A's creditors. A reserves no power of revocation. If no communication has been made to the creditors, A may revoke the trust. But if the creditors are parties to the arrangement, the trust cannot be revoked without their consent.

Revocation
not to defeat
what trustees
have duly
done

79. No trust can be revoked by the author of the trust so as to defeat or prejudice what the trustees may have duly done in execution of the trust

CHAPTER IX.

OF CERTAIN OBLIGATIONS IN THE NATURE OF TRUSTS.

Where obligation in nature of trust is created

80. An obligation in the nature of a trust is created in the following cases.

Where it does not appear that transferor intended to dispose of beneficial interest

81. Where the owner of property transfers or bequeaths it and it cannot be inferred consistently with the attendant circumstances that he intended to dispose of the beneficial interest therein, the transferee or legatee must hold such property for the benefit of the owner or his legal representative.

Illustrations

(a) A conveys land to B without consideration and declares no trust of any part. It cannot, consistently with the circumstances under which the transfer is made, be inferred that A intended to transfer the beneficial interest in the land. B holds the land for the benefit of A.

(b) A conveys to B two fields, Y and Z, and declares a trust of Y, but says nothing about Z. It cannot, consistently with the circumstances under which the transfer is made, be inferred that A intended to transfer the beneficial interest in Z. B holds Z for the benefit of A.

(c) A transfers certain stock belonging to him into the joint names of himself and B. It cannot, consistently with the circumstances under which the transfer is made, be inferred that A intended to transfer the beneficial interest in the stock during his life. A and B hold the stock for the benefit of A during his life.

(d) A makes a gift of certain land to his wife B. She takes the beneficial interest in the land free from any trust in favour of A, for it may be inferred from the circumstances that the gift was for B's benefit.

Transfer to one for consideration paid by another

82. Where property is transferred to one person for a consideration paid or provided by another person, and it appears that such other person did not intend to pay or provide such consideration for the benefit of the

(Chapter IX —Of certain Obligations in the Nature of Trusts)

transferee, the transferee must hold the property for the benefit of the person paying or providing the consideration

Nothing in this section shall be deemed to affect the Code of Civil Procedure¹, section 317, or Act No XI of 1859² (*to improve the law relating to sales of land for arrears of revenue in the Lower Provinces under the Bengal Presidency*), section 36

83. Where a trust is incapable of being executed, or where the trust is completely executed without exhausting the trust-property, the trustee, in the absence of a direction to the contrary, must hold the trust-property, or so much thereof as is unexhausted, for the benefit of the author of the trust or his legal representative

Trust incapable of execution or executed without exhausting trust-property

Illustrations

- (a) A conveys certain land to B—
 “upon trust,” and no trust is declared, or
 “upon trust to be thereafter declared,” and no such declaration is ever made, or
 upon trusts that are too vague to be executed, or
 upon trusts that become incapable of taking effect, or
 “in trust for C,” and C renounces his interest under the trust
 In each of these cases B holds the land for the benefit of A

(b) A transfers Rs 10,000 in the four per cents to B, in trust to pay the interest annually accruing due to C for her life. A dies. Then C dies. B holds the fund for the benefit of A's legal representative

(c) A conveys land to B upon trust to sell it and apply one moiety of the proceeds for certain charitable purposes, and the other for the maintenance of the worship of an idol. B sells the land, but the charitable purposes wholly fail, and the maintenance of the worship does not exhaust the second moiety of the proceeds. B holds the first moiety and the part unapplied of the second moiety for the benefit of A or his legal representative

(d) A bequeaths Rs 10,000 to B, to be laid out in buying land to be conveyed for purposes which either wholly or partially fail to take effect. B holds for the benefit of A's legal representative the undisposed of interest in the money or land if purchased

84. Where the owner of property transfers it to another for an illegal purpose and such purpose is not carried into execution, or the transferor is not as guilty as the transferee, or the effect of permitting the transferee to retain the property might be to defeat the provisions of any law, the transferee must hold the property for the benefit of the transferor

Transfer for illegal purpose

85. Where a testator bequeaths certain property upon trust and the purpose of the trust appears on the face of the will to be unlawful, or during the testator's lifetime the legatee agrees with him to apply the property for an unlawful purpose, the legatee must hold the property for the benefit of the testator's legal representative

Bequest for illegal purpose

Where property is bequeathed and the revocation of the bequest is prevented by coercion, the legatee must hold the property for the benefit of the testator's legal representative.

Bequest of which revocation is prevented by coercion

¹ See now the Code of Civil Procedure, 1908 (Act 5 of 1908)

² The Bengal Land-Revenue Sales Act, 1859

(Chapter IX —Of certain Obligations in the Nature of Trusts.)

Transfer
pursuant to
rescindable
contract

86. Where property is transferred in pursuance of a contract which is liable to rescission or induced by fraud or mistake, the transferee must, on receiving notice to that effect, hold the property for the benefit of the transferor, subject to repayment by the latter of the consideration actually paid

Debtor
becoming
creditor's re-
presentative

87. Where a debtor becomes the executor or other legal representative of his creditor, he must hold the debt for the benefit of the persons interested therein

Advantage
gained by
fiduciary

88. Where a trustee, executor, partner, agent, director of a company, legal adviser, or other person bound in a fiduciary character to protect the interests of another person, by availing himself of his character, gains for himself any pecuniary advantage, or where any person so bound enters into any dealings under circumstances in which his own interests are, or may be, adverse to those of such other person and thereby gains for himself a pecuniary advantage, he must hold for the benefit of such other person the advantage so gained

Illustrations

(a) A, an executor, buys at an undervalue from B, a legatee, his claim under the will B is ignorant of the value of the bequest A must hold for the benefit of B the difference between the price and value

(b) A, a trustee, uses the trust-property for the purpose of his own business A holds for the benefit of his beneficiary the profits arising from such use

(c) A, a trustee, retires from his trust in consideration of his successor paying him a sum of money A holds such money for the benefit of his beneficiary

(d) A, a partner, buys land in his own name with funds belonging to the partnership A holds such land for the benefit of the partnership

(e) A, a partner, employed on behalf of himself and his co-partners is negotiating the terms of a lease, clandestinely stipulates with the lessor for payment to himself of a lakh of rupees A holds the lakh for the benefit of the partnership

(f) A and B are partners A dies B, instead of winding up the affairs of the partnership, retains all the assets in the business B must account to A's legal representative for the profits arising from A's share of the capital.

(g) A, an agent employed to obtain a lease for B, obtains the lease for himself A holds the lease for the benefit of B

(h) A, a guardian, buys up for himself incumbrances on his ward B's estate at an undervalue A holds for the benefit of B the incumbrances so bought, and can only charge him with what he has actually paid

Advantage
gained by exer-
cise of undue
influence

89. Where, by the exercise of undue influence, any advantage is gained in derogation of the interests of another, the person gaining such advantage without consideration, or with notice that such influence has been exercised, must hold the advantage for the benefit of the person whose interests have been so prejudiced

Advantage
gained by
qualified
owner

90. Where a tenant for life, co-owner, mortgagee or other qualified owner of any property, by availing himself of his position as such, gains an advantage in derogation of the rights of the other persons interested in the property, or where any such owner, as representing all persons interested in such property, gains any advantage, he must hold, for the

(Chapter IX.—Of certain Obligations in the Nature of Trusts)

benefit of all persons so interested, the advantage so gained, but subject to repayment by such persons of their due share of the expenses properly incurred, and to an indemnity by the same persons against liabilities properly contracted, in gaining such advantage.

Illustrations

(a) A, the tenant for life of leasehold property, renews the lease in his own name and for his own benefit. A holds the renewed lease for the benefit of all those interested in the old lease.

(b) A village belongs to a Hindu family. A, one of its members, pays nazrána to Government and thereby procures his name to be entered as the inámdar of the village. A holds the village for the benefit of himself and the other members.

(c) A mortgages land to B, who enters into possession. B allows the Government revenue to fall into arrear with a view to the land being put up for sale and his becoming himself the purchaser of it. The land is accordingly sold to B. Subject to the repayment of the amount due on the mortgage and of his expenses properly incurred as mortgagee B holds the land for the benefit of A.

91. Where a person acquires property with notice that another person has entered into an existing contract affecting that property, of which specific performance could be enforced, the former must hold the property for the benefit of the latter to the extent necessary to give effect to the contract.

Property acquired with notice of existing contract

92. Where a person contracts to buy property to be held on trust for certain beneficiaries and buys the property accordingly, he must hold the property for their benefit to the extent necessary to give effect to the contract.

Purchase by person contracting to buy property to be held on trust

93. Where creditors compound the debts due to them, and one of such creditors, by a secret arrangement with the debtor, gains an undue advantage over his co-creditors, he must hold for the benefit of such creditors the advantage so gained.

Advantage secretly gained by one of several compounding creditors

94. In any case not coming within the scope of any of the preceding sections, where there is no trust, but the person having possession of property has not the whole beneficial interest therein, he must hold the property for the benefit of the persons having such interest, or the residue thereof (as the case may be), to the extent necessary to satisfy their just demands.

Constructive trusts in cases not expressly provided for

Illustrations

(a) A, an executor, distributes the assets of his testator B to the legatees without having paid the whole of B's debts. The legatees hold for the benefit of B's creditors, to the extent necessary to satisfy their just demands, the assets so distributed.

(b) A by mistake assumes the character of a trustee for B, and under colour of the trust receives certain money. B may compel him to account for such moneys.

(c) A makes a gift of a lakh of rupees to B, reserving to himself, with B's assent, power to revoke at pleasure the gift as to Rs. 10,000. The gift is void as to Rs. 10,000, and B holds that sum for the benefit of A.

(Chapter IX —Of certain Obligations in the Nature of Trusts.
The Schedule)

Obligor's
duties, liabilities and
disabilities

95. The person holding property in accordance with any of the preceding sections of this Chapter must, so far as may be, perform the same duties, and is subject, so far as may be, to the same liabilities and disabilities, as if he were a trustee of the property for the person for whose benefit he holds it

Provided that (a) where he rightfully cultivates the property or employs it in trade or business, he is entitled to reasonable remuneration for his trouble, skill and loss of time in such cultivation or employment, and (b) where he holds the property by virtue of a contract with a person for whose benefit he holds it, or with any one through whom such person claims, he may, without the permission of the Court, buy or become lessee or mortgagee of the property or any part thereof

Saving of
rights of
bonâ fide
purchasers

96. Nothing contained in this Chapter shall impair the rights of transferees in good faith for consideration, or create an obligation in evasion of any law for the time being in force

THE SCHEDULE

(See section 2)

STATUTE

Year and Chapter	Short title	Extent of repeal
29 Cal II, c 3	The Statute of Frauds	Sections 7, 8, 9, 10 and 11.

ACTS OF THE GOVERNOR GENERAL IN COUNCIL

Number and year	Short title	Extent of repeal
XXVIII of 1866	The Trustees' and Mortgagees' Powers Act, 1866	Sections 2, 3, 4, 5, 32, 33, 34, 35, 36 and 37 In section 1 * * 43 the word "trustee" wherever it occurs, and in section 43 the words "management or" and "the trust-property or"
I of 1877 . . .	The Specific Relief Act, 1877	In section 12 the first illustration

¹ The figures "39", and by implication the word "and", were rep. by the Amending Act, 1891 (12 of 1891), s 2 and Sch. I

THE TRANSFER OF PROPERTY ACT, 1882

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(Chapter I —Preliminary)

ACT NO IV OF 1882 ¹

[17th February, 1882]

An Act to amend the law relating to the Transfer of Property by
Act of Parties

WHEREAS it is expedient to define and amend certain parts of the Preamble law relating to the transfer of property by act of parties , It is hereby enacted as follows —

CHAPTER I

PRELIMINARY

1. This Act may be called the Transfer of Property Act, 1882

It shall come into force on the first day of July, 1882

It extends² in the first instance to ^{whole} '[all the Provinces of India] except
⁴[Bombay, ~~East~~ Punjab and Delhi]

Short title
Commence
ment
Extent

⁵[But this Act or any Part thereof may by notification in the Official Gazette be extended to the whole or any part of the ^{whole} '[said Provinces] by the Provincial Government concerned]

¹ For Statement of Objects and Reasons, see Gazette of India, 1877, Pt V, p 171, for the Preliminary Report of the Select Committee, see *ibid*, 1878, Pt V, p 48, for the further Report of the Select Committee, see *ibid*, 1879, Pt V, p 106, for the third Report of the Select Committee, see *ibid*, 1881, Pt V, p 395, for Proceedings in Council, see *ibid*, 1877, Supplement, p 1568, *ibid*, 1877, Supplement, p 1690; *ibid*, 1882, Supplement, pp 96 and 169

² The application of this Act was barred in the Naga Hills District, including the Mokokchang Sub-Division, the Dibrugarh Frontier Tract, the North Cachar Hills, the Garo Hills, the Khasia and Jaintia Hills and the Mikir Hills Tract, by notification under s 2 of the Assam Frontier Tracts Regulation, 1880 (2 of 1880)

The Act has been declared to be in force in Panth Piploda by the Panth Piploda Laws Regulation, 1929 (1 of 1929), s. 2, and continued in force, with modifications, in the territory transferred to Delhi Province by the Delhi Laws Act, 1915 (7 of 1915), s 3 and Sch III It has also been partially extended to Bejar by the Berar Laws Act, 1941 (4 of 1941)

The Act has been extended with effect from 1st January, 1893, to the whole of the territories, other than the Scheduled Districts, under the administration of the Govt of Bombay

Ss. 54, 107 and 123 have been extended from 6th May, 1935, to all Municipalities in the Punjab and to all notified areas declared and notified under s 241 of the Punjab Municipal Act, 1911 (Pun 3 of 1911), see Punjab Gazette Extraordinary, 1925, p 27 Those ss and s 129 have been extended to certain areas in Delhi Province, see notifications No 198/38-III, dated 30th May, 1939, Gazette of India, 1939, Pt I, p 918, and No 61/40-Judl, dated 16th November, 1940, Gazette of India, 1940, Pt I, p 1639, respectively

It has been rep as to Crown Grants by the Crown Grants Act, 1895 (15 of 1895) and rep or modified to the extent necessary to give effect to the provisions of the Madras City Tenants Protection Act, 1921 (Mad 3 of 1922), in the City of Madras, see s 13 of that Act

It has been amended in Bombay by Bombay Act 14 of 1939,

³ Subs by the A O 1948 for "the whole of British India"

⁴ Subs by the A. O. 1948 for the original words as amended by the A O 1937

⁵ Subs by the A O. 1937 for the original words as amended by the Transfer of Property (Amendment) Act, 1904 (6 of 1904), s 2

⁶ Subs by the A O 1948 for "said territories".

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¹[And any ²~~Provincial~~ ^{State} Government] may, * * * * from time to time, by notification in the ⁴[Official Gazette], exempt either retrospectively or prospectively, any part of the territories administered by such ²~~Provincial~~ ^{State} Government] from all or any of the following provisions, namely —

Sections 54, paragraphs 2 and 3, 59, 107 and 123.]

⁵[Notwithstanding anything in the foregoing part of this section, sections 54, paragraphs 2 and 3, 59, 107 and 123 shall not extend or be extended to any district or tract of country for the time being excluded from the operation of the Indian Registration Act, ⁶[1908], under the power XVI of 190 conferred by the first section of that Act or otherwise]

repeal of
acts

saving of
certain
enactments,
rights, habi-
tudes, etc

2. In the territories to which this Act extends for the time being the enactments specified in the schedule hereto annexed shall be repealed to the extent therein mentioned But nothing herein contained shall be deemed to affect—

- (a) the provisions of any enactment not hereby expressly repealed.
- (b) any terms or incidents of any contract or constitution of property which are consistent with the provisions of this Act, and are allowed by the law for the time being in force.
- (c) any right or liability arising out of a legal relation constituted before this Act comes into force, or, any relief in respect of any such right or liability, or
- (d) save as provided by section 57 and Chapter IV of this Act, any transfer by operation of law or by, or in execution of, a decree or order of a Court of competent jurisdiction

and nothing in the second chapter of this Act shall be deemed to affect any rule of * * Muhammadan * * law

¹ Subs by the Transfer of Property Act (1882) Amendment Act, 1885 (3 of 1885), s 1, for the original para

² Subs by the A O 1937 for "L G"

³ The words "with the previous sanction of the G G in C" rep by the Devolution Act, 1920 (38 of 1920), s 2 and Sch I

⁴ Subs by the A O 1937 for "local official Gazette"

⁵ Ins by Act 3 of 1885, s 2, it is to be deemed to have been added from the date on which Act 4 of 1882 came into force

S 54, paras 2 and 3, and ss 59, 107 and 123 extend to every cantonment in the Provinces—see s 287 of the Cantonments Act, 1924 (2 of 1924).

⁶ Subs by the Transfer of Property (Amendment) Act, 1929 (20 of 1929), s 2 for "1877"

⁷ The word "Hindu" rep by s 3, *ibid*

⁸ The words "or Buddhist" rep by s. 3, *ibid*.

(Chapter I —Preliminary)

3. In this Act, unless there is something repugnant in the subject or context,— Interpreta-
tion clause

“immoveable property” does not include standing timber, growing crops or grass.

“instrument” means a non-testamentary instrument.

¹“attested”, in relation to an instrument, means ²[and shall be deemed always to have meant] attested by two or more witnesses each of whom has seen the executant sign or affix his mark to the instrument, or has seen some other person sign the instrument in the presence and by the direction of the executant, or has received from the executant a personal acknowledgment of his signature or mark, or of the signature of such other person, and each of whom has signed the instrument in the presence of the executant, but it shall not be necessary that more than one of such witnesses shall have been present at the same time, and no particular form of attestation shall be necessary.]

“registered” means registered in ³[~~a Province~~ *any State to which*] under the law⁴ for the time being in force regulating the registration of documents

“attached to the earth” means—

(a) rooted in the earth, as in the case of trees and shrubs,

(b) imbedded in the earth, as in the case of walls or buildings; or

(c) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached:

“actionable claim” means a claim to any debt, other than a debt secured by mortgage of immoveable property or by hypothecation or pledge of moveable property, or to any beneficial interest in moveable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognize as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent:]

⁵“a person is said to have notice” of a fact when he actually knows that fact, or when, but for wilful abstention from an inquiry or search which he ought to have made, or gross negligence, he would have known it.

Explanation I—Where any transaction relating to immoveable property is required by law to be and has been effected by a registered instrument, any person acquiring such property or any part of, or share or interest in, such property shall be deemed to have notice of such instrument as from the date of registration or, ⁷[where the property is not

¹ Ins. by the Transfer of Property (Amendment) Act, 1926 (27 of 1926), s. 2

² Ins. by the Repealing and Amending Act, 1927 (10 of 1927), s. 2 and Sch. I

³ Subs. by the A. O. 1948 for “British India”

⁴ See the Indian Registration Act, 1908 (16 of 1908)

⁵ Ins. by the Transfer of Property Act, 1900 (2 of 1900), s. 2

⁶ This paragraph with the explanations and provisos was subs. for the original paragraph by the Transfer of Property (Amendment) Act, 1929 (20 of 1929), s. 4

⁷ Subs. by the Transfer of Property (Amendment) Act, 1930 (5 of 1930), s. 2, for the former words

(Chapter I—Preliminary Chapter II—Of Transfers of Property by Act of Parties)

all situated in one sub-district, or where the registered instrument has been registered under sub-section (2) of section 30 of the Indian Registration Act, 1908, from the earliest date on which any memorandum of such registered instrument has been filed by any Sub-Registrar within whose sub-district any part of the property which is being acquired, or of the property wherein a share or interest is being acquired, is situated]

Provided that—

- (1) the instrument has been registered and its registration completed in the manner prescribed by the Indian Registration Act, 1908, and the rules made thereunder, XVI of 1908
- (2) the instrument ¹[or memorandum] has been duly entered or filed, as the case may be, in books kept under section 51 of that Act, and
- (3) the particulars regarding the transaction to which the instrument relates have been correctly entered in the indexes kept under section 55 of that Act.

Explanation II—Any person acquiring any immoveable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who is for the time being in actual possession thereof

Explanation III—A person shall be deemed to have had notice of any fact if his agent acquires notice thereof whilst acting on his behalf in the course of business to which that fact is material

Provided that, if the agent fraudulently conceals the fact, the principal shall not be charged with notice thereof as against any person who was a party to or otherwise cognizant of the fraud]

4. The chapters and sections of this Act which relate to contracts shall be taken as part of the Indian Contract Act, 1872 IX of 1872

²[And sections 54, paragraphs 2 and 3, 59, 107 and 123 shall be read as supplemental to the Indian Registration Act, ³[1908]] XVI of 1908

Enactments relating to contracts to be taken as part of Contract Act

CHAPTER II

OF TRANSFERS OF PROPERTY BY ACT OF PARTIES

(A) *Transfer of Property, whether moveable or immoveable*

5. In the following sections "transfer of property" means an act by which a living person conveys property, in present or in future, to one

"Transfer of property" defined

¹ Ins by the Transfer of Property (Amendment) Act, 1930 (5 of 1930), s 2

² Ins by the Transfer of Property Act (1882) Amendment Act, 1885 (3 of 1885),

s 3 ³ Subs for "1877" by the Transfer of Property (Amendment) Act, 1929 (20 of 1929), s 5

(Chapter II —Of Transfers of Property by Act of Parties)

or more other living persons, or to himself, ¹[or to himself] and one or more other living persons, and "to transfer property" is to perform such act

¹[In this section "living person" includes a company or association or body of individuals, whether incorporated or not, but nothing herein contained shall affect any law for the time being in force relating to transfer of property to or by companies, associations or bodies of individuals]

6. Property of any kind may be transferred, except as otherwise provided by this Act or by any other law for the time being in force What may be transferred.

(a) The chance of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman, or any other mere possibility of a like nature, cannot be transferred

(b) A mere right of re-entry for breach of a condition subsequent cannot be transferred to any one except the owner of the property affected thereby

(c) An easement cannot be transferred apart from the dominant heritage

(d) An interest in property restricted in its enjoyment to the owner personally cannot be transferred by him

²[(*dd*) A right to future maintenance, in whatsoever manner arising, secured or determined, cannot be transferred]

(e) A mere right to sue * * * cannot be transferred

(f) A public office cannot be transferred, nor can the salary of a public officer, whether before or after it has become payable.

(g) Stipends allowed to military ⁴[, naval], ⁵[air-force] and civil pensioners of ⁶[the Crown] and political pensions cannot be transferred.

(h) No transfer can be made (1) in so far as it is opposed to the nature of the interest affected thereby, or (2) ⁷[for an unlawful object or consideration within the meaning of section 23 of the Indian Contract Act, 1872,] or (3) to a person legally disqualified to be transferee

⁸[(i) Nothing in this section shall be deemed to authorize a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate under the management of a Court of Wards, to assign his interest as such tenant, farmer or lessee]

¹ Ins by the Transfer of Property (Amendment) Act, 1929 (20 of 1929), s 6

² Ins by s 7, *ibid*

³ The words "for compensation for a fraud or for harm illegally caused" rep by s 3 (4) of the Transfer of Property Act, 1900 (2 of 1900)

⁴ Ins by the Amending Act, 1934 (35 of 1934), s 2 and Sch

⁵ Ins by the Repealing and Amending Act, 1927 (10 of 1927), s 2 and Sch I

⁶ Subs by the A O 1937 for "Govt"

⁷ Subs by Act 2 of 1900, s 3 (ii), for "for an illegal purpose"

⁸ Ins. by the Transfer of Property Act (1882) Amendment Act, 1885 (3 of 1885).

(Chapter II —Of Transfers of Property by Act of Parties)

Persons com-
petent to
transfer

7. Every person competent to contract and entitled to transferable property, or authorized to dispose of transferable property not his own, is competent to transfer such property either wholly or in part, and either absolutely or conditionally, in the circumstances, to the extent and in the manner allowed and prescribed by any law for the time being in force.

Operation of
transfer

8. Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property, and in the legal incidents thereof

Such incidents include, where the property is land, the easements annexed thereto, the rents and profits thereof accruing after the transfer, and all things attached to the earth,

and, where the property is machinery attached to the earth, the moveable parts thereof,

and, where the property is a house, the easements annexed thereto, the rent thereof accruing after the transfer, and the locks, keys, bars, doors, windows, and all other things provided for permanent use therewith,

and, where the property is a debt or other actionable claim, the securities therefor (except where they are also for other debts or claims not transferred to the transferee), but not arrears of interest accrued before the transfer,

and, where the property is money or other property yielding income, the interest or income thereof accruing after the transfer takes effect

Oral transfer

9. A transfer of property may be made without writing in every case in which a writing is not expressly required by law

Condition
restraining
alienation.

10. Where property is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property, the condition or limitation is void, except in the case of a lease where the condition is for the benefit of the lessor or those claiming under him. Provided that property may be transferred to or for the benefit of a woman (not being a Hindu, Muhammadan or Buddhist), so that she shall not have power during her marriage to transfer or charge the same or her beneficial interest therein

Restriction
repugnant
to interest
created.

11. Where, on a transfer of property, an interest therein is created absolutely in favour of any person, but the terms of the transfer direct that such interest shall be applied or enjoyed by him in a particular manner, he shall be entitled to receive and dispose of such interest as if there were no such direction

¹[Where any such direction has been made in respect of one piece of immoveable property for the purpose of securing the beneficial enjoyment

¹ Subs. by the Transfer of Property (Amendment) Act, 1929 (20 of 1929), s. 8, for the original second paragraph.

(Chapter II —Of Transfers of Property by Act of Parties)

of another piece of such property, nothing in this section shall be deemed to affect any right which the transferor may have to enforce such direction or any remedy which he may have in respect of a breach thereof]

12. Where property is transferred subject to a condition or limitation making any interest therein, reserved or given to or for the benefit of any person, to cease on his becoming insolvent or endeavouring to transfer or dispose of the same, such condition or limitation is void

Condition making interest determinable on insolvency or attempted alienation

Nothing in this section applies to a condition in a lease for the benefit of the lessor or those claiming under him

13. Where, on a transfer of property, an interest therein is created for the benefit of a person not in existence at the date of the transfer, subject to a prior interest created by the same transfer, the interest created for the benefit of such person shall not take effect, unless it extends to the whole of the remaining interest of the transferor in the property

Transfer for benefit of unborn person

Illustration

A transfers property of which he is the owner to B in trust for A and his intended wife successively for their lives, and, after the death of the survivor, for the eldest son of the intended marriage for life, and after his death for A's second son. The interest so created for the benefit of the eldest son does not take effect, because it does not extend to the whole of A's remaining interest in the property

14. No transfer of property can operate to create an interest which is to take effect after the life-time of one or more persons living at the date of such transfer, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the interest created is to belong

Rule against perpetuity

15. If, on a transfer of property, an interest therein is created for the benefit of a class of persons with regard to some of whom such interest fails by reason of any of the rules contained in sections 13 and 14, such interest fails ¹[in regard to those persons only and not in regard to the whole class]

Transfer to class some of whom come under sections 13 and 14

²[16. Where, by reason of any of the rules contained in sections 13 and 14, an interest created for the benefit of a person or of a class of persons fails in regard to such person or the whole of such class, any interest created in the same transaction and intended to take effect after or upon failure of such prior interest also fails

Transfer to take effect on failure of prior interest

17. (1) Where the terms of a transfer of property direct that the income arising from the property shall be accumulated either wholly or in part during a period longer than—

Direction for accumulation

(a) the life of the transferor, or

(b) a period of eighteen years from the date of the transfer, ³

such direction shall, save as hereinafter provided, be void to the extent to

¹ Subs by the Transfer of Property (Amendment) Act, 1929 (20 of 1929), s 9, for "as regards the whole class"

² New ss 16 to 18 were subs for the original sections by s 10, *ibid*

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which the period during which the accumulation is directed exceeds the longer of the aforesaid periods, and at the end of such last-mentioned period the property and the income thereof shall be disposed of as if the period during which the accumulation has been directed to be made had elapsed

(2) This section shall not affect any direction for accumulation for the purpose of—

- (i) the payment of the debts of the transferor or any other person taking any interest under the transfer, or
- (ii) the provision of portions for children or remoter issue of the transferor or of any other person taking any interest under the transfer, or
- (iii) the preservation or maintenance of the property transferred ; and such direction may be made accordingly.

Transfer in
perpetuity for
benefit of
public

18. The restrictions in sections 14, 16 and 17 shall not apply in the case of a transfer of property for the benefit of the public in the advancement of religion, knowledge, commerce, health, safety, or any other object beneficial to mankind]

Vested
interest

19 Where, on a transfer of property, an interest therein is created in favour of a person without specifying the time when it is to take effect, or in terms specifying that it is to take effect forthwith or on the happening of an event which must happen, such interest is vested, unless a contrary intention appears from the terms of the transfer

A vested interest is not defeated by the death of the transferee before he obtains possession

Explanation —An intention that an interest shall not be vested is not to be inferred merely from a provision whereby the enjoyment thereof is postponed, or whereby a prior interest in the same property is given or reserved to some other person, or whereby income arising from the property is directed to be accumulated until the time of enjoyment arrives, or from a provision that if a particular event shall happen the interest shall pass to another person

When unborn
person ac-
quires vested
interest on
transfer for
his benefit

20. Where, on a transfer of property, an interest therein is created for the benefit of a person not then living, he acquires upon his birth, unless a contrary intention appear from the terms of the transfer, a vested interest, although he may not be entitled to the enjoyment thereof immediately on his birth

Contingent
interest

21. Where, on a transfer of property, an interest therein is created in favour of a person to take effect only on the happening of a specified uncertain event, or if a specified uncertain event shall not happen, such person thereby acquires a contingent interest in the property. Such interest becomes a vested interest, in the former case, on the happening of the event, in the latter, when the happening of the event becomes impossible

(Chapter II —Of Transfers of Property by Act of Parties)

Exception —Where, under a transfer of property, a person becomes entitled to an interest therein upon attaining a particular age, and the transferor also gives to him absolutely the income to arise from such interest before he reaches that age, or directs the income or so much thereof as may be necessary to be applied for his benefit, such interest is not contingent.

22. Where, on a transfer of property, an interest therein is created in favour of such members only of a class as shall attain a particular age, such interest does not vest in any member of the class who has not attained that age

Transfer to members of a class who attain a particular age

23. Where, on a transfer of property, an interest therein is to accrue to a specified person if a specified uncertain event shall happen, and no time is mentioned for the occurrence of that event, the interest fails unless such event happens before, or at the same time as, the intermediate or precedent interest ceases to exist

Transfer contingent on happening of specified uncertain event

24. Where, on a transfer of property, an interest therein is to accrue to such of certain persons as shall be surviving at some period, but the exact period is not specified, the interest shall go to such of them as shall be alive when the intermediate or precedent interest ceases to exist, unless a contrary intention appears from the terms of the transfer

Transfer to such of certain persons as survive at some period not specified

Illustration

A transfers property to B for life and after his death to C and D, equally to be divided between them, or to the survivor of them. C dies during the life of B. D survives B. At B's death the property passes to D.

25. An interest created on a transfer of property and dependent upon a condition fails if the fulfilment of the condition is impossible, or is forbidden by law, or is of such a nature that, if permitted, it would defeat the provisions of any law, or is fraudulent, or involves or implies injury to the person or property of another, or the Court regards it as immoral or opposed to public policy

Conditional transfer

Illustrations

(a) A lets a farm to B on condition that he shall walk a hundred miles in an hour. The lease is void.

(b) A gives Rs. 500 to B on condition that he shall marry A's daughter C. At the date of the transfer C was dead. The transfer is void.

(c) A transfers Rs. 500 to B on condition that she shall murder C. The transfer is void.

(d) A transfers Rs. 500 to his niece C if she will desert her husband. The transfer is void.

26. Where the terms of a transfer of property impose a condition to be fulfilled before a person can take an interest in the property, the condition shall be deemed to have been fulfilled if it has been substantially complied with

Fulfilment of condition precedent

Illustrations

(a) A transfers Rs. 5,000 to B on condition that he shall marry with the consent of C, D and E. E dies. B marries with the consent of C and D. B is deemed to have fulfilled the condition.

(Chapter II —Of Transfers of Property by Act of Parties)

(b) A transfers Rs 5,000 to B on condition that he shall marry with the consent of C, D and E. B marries without the consent of C, D and E, but obtains their consent after the marriage. B has not fulfilled the condition.

Conditional transfer to one person coupled with transfer to another on failure of prior disposition

27. Where, on a transfer of property, an interest therein is created in favour of one person, and by the same transaction an ulterior disposition of the same interest is made in favour of another, if the prior disposition under the transfer shall fail, the ulterior disposition shall take effect upon the failure of the prior disposition, although the failure may not have occurred in the manner contemplated by the transferor.

But, where the intention of the parties to the transaction is that the ulterior disposition shall take effect only in the event of the prior disposition failing in a particular manner, the ulterior disposition shall not take effect unless the prior disposition fails in that manner.

Illustrations

(a) A transfers Rs 500 to B on condition that he shall execute a certain lease within three months after A's death, and, if he should neglect to do so, to C. B dies in A's life-time. The disposition in favour of C takes effect.

(b) A transfers property to his wife, but, in case she should die in his life-time, transfers to B that which he had transferred to her. A and his wife perish together, under circumstances which make it impossible to prove that she died before him. The disposition in favour of B does not take effect.

Uterior transfer conditional on happening or not happening of specified event

28. On a transfer of property an interest therein may be created to accrue to any person with the condition superadded that in case a specified uncertain event shall happen such interest shall pass to another person, or that in case a specified uncertain event shall not happen such interest shall pass to another person. In each case the dispositions are subject to the rules contained in sections 10, 12, 21, 22, 23, 24, 25 and 27.

Fulfilment of condition subsequent

29. An ulterior disposition of the kind contemplated by the last preceding section cannot take effect unless the condition is strictly fulfilled.

Illustration

A transfers Rs 500 to B, to be paid to him on his attaining his majority or marrying, with a proviso that, if B dies a minor or marries without C's consent, the Rs 500 shall go to D. B marries when only 17 years of age, without C's consent. The transfer to D takes effect.

Prior disposition not affected by invalidity of ulterior disposition

30. If the ulterior disposition is not valid, the prior disposition is not affected by it.

Illustration

A transfers a farm to B for her life, and, if she do not desert her husband, to C. B is entitled to the farm during her life as if no condition had been inserted.

Condition that transfer shall cease to have effect in case specified uncertain event happens or does not happen

31. Subject to the provisions of section 12, on a transfer of property an interest therein may be created with the condition superadded that it shall cease to exist in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen.

Illustrations

(a) A transfers a farm to B for his life, with a proviso that, in case B cuts down a certain wood, the transfer shall cease to have any effect. B cuts down the wood. He loses his life-interest in the farm.

(Chapter II —Of Transfers of Property by Act of Parties)

(b) A transfers a farm to B, provided that, if B shall not go to England within three years after the date of the transfer, his interest in the farm shall cease. B does not go to England within the term prescribed. His interest in the farm ceases.

32. In order that a condition that an interest shall cease to exist may be valid, it is necessary that the event to which it relates be one which can legally constitute the condition of the creation of an interest. Such condition must not be invalid.

33. Where, on a transfer of property, an interest therein is created subject to a condition that the person taking it shall perform a certain act, but no time is specified for the performance of the act, the condition is broken when he renders impossible, permanently or for an indefinite period, the performance of the act. Transfer conditional on performance of act, no time being specified for performance

34. Where an act is to be performed by a person either as a condition to be fulfilled before an interest created on a transfer of property is enjoyed by him, or as a condition on the non-fulfilment of which the interest is to pass from him to another person, and a time is specified for the performance of the act, if such performance within the specified time is prevented by the fraud of a person who would be directly benefited by non-fulfilment of the condition, such further time shall as against him be allowed for performing the act as shall be requisite to make up for the delay caused by such fraud. But if no time is specified for the performance of the act, then, if its performance is by the fraud of a person interested in the non-fulfilment of the condition rendered impossible or indefinitely postponed, the condition shall as against him be deemed to have been fulfilled. Transfer conditional on performance of act, time being specified

Election

35. Where a person professes to transfer property which he has no right to transfer, and as part of the same transaction confers any benefit on the owner of the property, such owner must elect either to confirm such transfer or to dissent from it, and in the latter case he shall relinquish the benefit so conferred, and the benefit so relinquished shall revert to the transferor or his representative as if it had not been disposed of. Election when necessary

subject nevertheless,

where the transfer is gratuitous, and the transferor has, before the election, died or otherwise become incapable of making a fresh transfer, and in all cases where the transfer is for consideration,

to the charge of making good to the disappointed transferee the amount or value of the property attempted to be transferred to him

Illustrations

The farm of Sultanpur is the property of C and worth Rs 800. A by an instrument of gift professes to transfer it to B, giving by the same instrument Rs 1,000 to C. C elects to retain the farm. He forfeits the gift of Rs 1,000.

In the same case, A dies before the election. His representative must out of the Rs 1,000 pay Rs 800 to B.

(Chapter II —Of Transfers of Property by Act of Parties)

The rule in the first paragraph of this section applies whether the transferor does or does not believe that which he professes to transfer to be his own

A person taking no benefit directly under a transaction, but deriving a benefit under it indirectly, need not elect

A person who in his one capacity takes a benefit under the transaction may in another dissent therefrom

Exception to the last preceding four rules —Where a particular benefit is expressed to be conferred on the owner of the property which the transferor professes to transfer, and such benefit is expressed to be in lieu of that property, if such owner claim the property, he must relinquish the particular benefit, but he is not bound to relinquish any other benefit conferred upon him by the same transaction

Acceptance of the benefit by the person on whom it is conferred constitutes an election by him to confirm the transfer, if he is aware of his duty to elect and of those circumstances which would influence the judgment of a reasonable man in making an election, or if he waives enquiry into the circumstances

Such knowledge or waiver shall, in the absence of evidence to the contrary, be presumed, if the person on whom the benefit has been conferred has enjoyed it for two years without doing any act to express dissent

Such knowledge or waiver may be inferred from any act of his which renders it impossible to place the persons interested in the property professed to be transferred in the same condition as if such act had not been done

Illustration

A transfers to B an estate to which C is entitled, and as part of the same transaction gives C a coal-mine C takes possession of the mine and exhausts it He has thereby confirmed the transfer of the estate to B

If he does not within one year after the date of the transfer signify to the transferor or his representatives his intention to confirm or to dissent from the transfer, the transferor or his representatives may, upon the expiration of that period, require him to make his election, and, if he does not comply with such requisition within a reasonable time after he has received it, he shall be deemed to have elected to confirm the transfer

In case of disability, the election shall be postponed until the disability ceases, or until the election is made by some competent authority

Apportionment

Apportionment of periodical payments on determination

36. In the absence of a contract or local usage to the contrary, all rents, annuities, pensions, dividends and other periodical payments in the nature of income shall, upon the transfer of the interest of the person entitled to receive such payments, be deemed, as between the transferor

(Chapter II —Of Transfers of Property by Act of Parties)

and the transferee, to accrue due from day to day, and to be apportionable accordingly, but to be payable on the days appointed for the payment thereof

of interest of person entitled

37. When, in consequence of a transfer, property is divided and held in several shares, and thereupon the benefit of any obligation relating to the property as a whole passes from one to several owners of the property, the corresponding duty shall, in the absence of a contract to the contrary amongst the owners, be performed in favour of each of such owners in proportion to the value of his share in the property, provided that the duty can be severed and that the severance does not substantially increase the burden of the obligation, but if the duty cannot be severed, or if the severance would substantially increase the burden of the obligation, the duty shall be performed for the benefit of such one of the several owners as they shall jointly designate for that purpose

Apportionment of benefit of obligation on severance

Provided that no person on whom the burden of the obligation lies shall be answerable for failure to discharge it in manner provided by this section, unless and until he has had reasonable notice of the severance

Nothing in this section applies to leases for agricultural purposes unless and until the ¹[Provincial Government] by notification in the Official Gazette so directs

Illustrations

(a) A sells to B, C and D a house situate in a village and leased to E at an annual rent of Rs 30 and delivery of one fat sheep, B having provided half the purchase-money and C and D one-quarter each. E, having notice of this, must pay Rs 15 to B, Rs 7½ to C, and Rs 7½ to D, and must deliver the sheep according to the joint direction of B, C and D

(b) In the same case, each house in the village being bound to provide ten days' labour each year on a dyke to prevent inundation, E had agreed as a term of his lease to perform this work for A. B, C and D severally require E to perform the ten days' work due on account of the house of each. E is not bound to do more than ten days' work in all, according to such directions as B, C and D may join in giving

(B) Transfer of Immoveable Property.

38. Where any person, authorized only under circumstances in their nature variable to dispose of immoveable property, transfers such property for consideration, alleging the existence of such circumstances, they shall, as between the transferee on the one part and the transferor and other persons (if any) affected by the transfer on the other part, be deemed to have existed, if the transferee, after using reasonable care to ascertain the existence of such circumstances, has acted in good faith

Transfer by person authorized only under certain circumstances to transfer

Illustration

A, a Hindu widow, whose husband has left collateral heirs, alleging that the property held by her as such is insufficient for her maintenance, agrees, for purposes neither religious nor charitable, to sell a field, part of such property, to B. B satisfies himself by reasonable enquiry that the income of the property is insufficient for A's

¹ Subs by the A O 1937 for "L G".

(Chapter II—Of Transfers of Property by Act of Parties)

maintenance, and that the sale of the field is necessary, and, acting in good faith, buys the field from A. As between B on the one part and A and the collateral heirs on the other part, a necessity for the sale shall be deemed to have existed.

Transfer
where
third person
is entitled to
maintenance

39. Where a third person has a right to receive maintenance, or a provision for advancement or marriage, from the profits of immoveable property, and such property is transferred ¹* * * *, the right may be enforced against the transferee, if he has notice ²[thereof] or if the transfer is gratuitous, but not against a transferee for consideration and without notice of the right, nor against such property in his hands

* * * * *

Burden of
obligation
imposing
restriction on
use of land,

40. Where, for the more beneficial enjoyment of his own immoveable property, a third person has, independently of any interest in the immoveable property of another or of any easement thereon, a right to restrain the enjoyment ⁴[in a particular manner of the latter property], or

or of obligation
annexed
to ownership
but not
amounting
to interest or
easement

where a third person is entitled to the benefit of an obligation arising out of contract and annexed to the ownership of immoveable property, but not amounting to an interest therein or easement thereon,

such right or obligation may be enforced against a transferee with notice thereof or a gratuitous transferee of the property affected thereby, but not against a transferee for consideration and without notice of the right or obligation, nor against such property in his hands.

Illustration

A contracts to sell Sultanpur to B. While the contract is still in force he sells Sultanpur to C, who has notice of the contract. B may enforce the contract against C to the same extent as against A.

Transfer by
ostensible
owner

41. Where, with the consent, express or implied, of the persons interested in immoveable property, a person is the ostensible owner of such property, and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorized to make it provided that the transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith.

Transfer by
person having
authority to
revoke former
transfer

42. Where a person transfers any immoveable property, reserving power to revoke the transfer, and subsequently transfers the property for consideration to another transferee, such transfer operates in favour of such transferee (subject to any condition attached to the exercise of the power) as a revocation of the former transfer to the extent of the power

¹ The words "with the intention of defeating such right" rep. by the Transfer of Property (Amendment) Act, 1929 (20 of 1929), s. 11.

² Subs. by s. 11, *ibid.*, for "of such intention".

³ The illustration was rep. by s. 11, *ibid.*

⁴ Subs. by s. 12, *ibid.*, for "of the latter property or to compel its enjoyment in a particular manner".

(Chapter II —Of Transfers of Property by Act of Parties)

Illustration

A lets a house to B, and reserves power to revoke the lease if, in the opinion of a specified surveyor, B should make a use of it detrimental to its value. Afterwards A, thinking that such a use has been made, lets the house to C. This operates as a revocation of B's lease subject to the opinion of the surveyor as to B's use of the house having been detrimental to its value.

43. Where a person ¹[fraudulently or] erroneously represents that he is authorized to transfer certain immoveable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists.

Transfer by unauthorized person who subsequently acquires interest in property transferred

Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option.

Illustration

A, a Hindu, who has separated from his father B, sells to C three fields, X, Y and Z, representing that A is authorized to transfer the same. Of these fields Z does not belong to A, it having been retained by B on the partition, but on B's dying A as heir obtains Z. C, not having rescinded the contract of sale, may require A to deliver Z to him.

44. Where one of two or more co-owners of immoveable property legally competent in that behalf transfers his share of such property or any interest therein, the transferee acquires, as to such share or interest, and so far as is necessary to give effect to the transfer, the transferor's right to joint possession or other common or part enjoyment of the property, and to enforce a partition of the same, but subject to the conditions and liabilities affecting, at the date of the transfer, the share or interest so transferred.

Transfer by one co-owner

Where the transferee of a share of a dwelling-house belonging to an undivided family is not a member of the family, nothing in this section shall be deemed to entitle him to joint possession or other common or part enjoyment of the house.

45. Where immoveable property is transferred for consideration to two or more persons, and such consideration is paid out of a fund belonging to them in common, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property identical, as nearly as may be, with the interests to which they were respectively entitled in the fund, and, where such consideration is paid out of separate funds belonging to them respectively, they are, in the absence of a contract to the contrary, respectively entitled to interest in such property in proportion to the shares of the consideration which they respectively advanced.

Joint transfer for consideration

In the absence of evidence as to the interests in the fund to which they were respectively entitled, or as to the shares which they respectively

¹ Ins. by the Transfer of Property (Amendment) Act, 1929 (20 of 1929), s. 13

(Chapter II —Of Transfers of Property by Act of Parties)

advanced, such persons shall be presumed to be equally interested in the property.

Transfer for consideration by persons having distinct interests

46. Where immoveable property is transferred for consideration by persons having distinct interests therein, the transferors are, in the absence of a contract to the contrary, entitled to share in the consideration equally, where their interest in the property were of equal value, and, where such interests were of unequal value, proportionately to the value of their respective interests.

Illustrations

(a) A, owning a moiety, and B and C each a quarter share, of mauza Sultanpur, exchange an eighth share of that mauza for a quarter share of mauza Lalpura. There being no agreement to the contrary, A is entitled to an eighth share in Lalpura, and B and C each to a sixteenth share in that mauza.

(b) A, being entitled to a life-interest in mauza Atrali and B and C to the reversion, sell the mauza for Rs 1,000. A's life-interest is ascertained to be worth Rs 600, the reversion Rs 400. A is entitled to receive Rs 600 out of the purchase-money, B and C to receive Rs 400.

Transfer by co-owners of share in common property

47. Where several co-owners of immoveable property transfer a share therein without specifying that the transfer is to take effect on any particular share or shares of the transferors, the transfer, as among such transferors, takes effect on such shares equally where the shares were equal, and, where they were unequal, proportionately to the extent of such shares.

Illustration

A, the owner of an eight-anna share, and B and C, each the owner of a four-anna share, in mauza Sultanpur, transfer a two-anna share in the mauza to D, without specifying from which of their several shares the transfer is made. To give effect to the transfer one-anna share is taken from the share of A, and half-an-anna share from each of the shares of B and C.

Priority of rights created by transfer

48. Where a person purports to create by transfer at different times rights in or over the same immoveable property, and such rights cannot all exist or be exercised to their full extent together, each later created right shall, in the absence of a special contract or reservation binding the earlier transferees, be subject to the rights previously created.

Transferee's right under policy

49. Where immoveable property is transferred for consideration, and such property or any part thereof is at the date of the transfer insured against loss or damage by fire, the transferee, in case of such loss or damage, may, in the absence of a contract to the contrary, require any money which the transferor actually receives under the policy, or so much thereof as may be necessary, to be applied in reinstating the property.

Rent bond *fide* paid to holder under defective title

50. No person shall be chargeable with any rents or profits of any immoveable property, which he has in good faith paid or delivered to any person of whom he in good faith held such property, notwithstanding it may afterwards appear that the person to whom such payment or delivery was made had no right to receive such rents or profits.

(Chapter II —Of Transfers of Property by Act of Parties)

Illustration

A lets a field to B at a rent of Rs 50, and then transfers the field to C. B, having no notice of the transfer, in good faith pays the rent to A. B is not chargeable with the rent so paid.

51. When the transferee of immoveable property makes any improvement on the property, believing in good faith that he is absolutely entitled thereto, and he is subsequently evicted therefrom by any person having a better title, the transferee has a right to require the person causing the eviction either to have the value of the improvement estimated and paid or secured to the transferee, or to sell his interest in the property to the transferee at the then market-value thereof, irrespective of the value of such improvement.

Improvements made by *bonâ fide* holders under defective titles

The amount to be paid or secured in respect of such improvement shall be the estimated value thereof at the time of the eviction.

When, under the circumstances aforesaid, the transferee has planted or sown on the property crops which are growing when he is evicted therefrom, he is entitled to such crops and to free ingress and egress to gather and carry them.

52. During the ¹[pendency] in any Court having authority in ²[the Provinces], or established beyond the limits of ²[the Provinces] by ³[the Central Government * * *], of ⁴[any] suit or proceeding ⁵[which is not collusive and] in which any right to immoveable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.

Transfer of property pending suit relating thereto

⁶[Explanation —For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.]

⁷[53. (x) Every transfer of immoveable property made with intent to defeat or delay the creditors of the transferor shall be voidable at the option of any creditor so defeated or delayed.]

Fraudulent transfer

¹ Subs. by the Transfer of Property (Amendment) Act, 1929 (20 of 1929), s. 14, for "active prosecution."

² Subs. by the A. O. 1948 for "British India."

³ Subs. by the A. O. 1937 for "the G. G. in C."

⁴ The words "or the Crown Representative" rep. by the A. O. 1948.

⁵ Subs. by Act 20 of 1929, s. 14, for "a contentious."

⁶ Ins. by s. 14, *ibid*.

⁷ Subs. by s. 15, *ibid*, for the original section.

(Chapter II —Of Transfers of Property by Act of Parties Chapter
III —Of Sales of Immoveable Property)

Nothing in this sub-section shall impair the rights of a transferee in good faith and for consideration

Nothing in this sub-section shall affect any law for the time being in force relating to insolvency

A suit instituted by a creditor (which term includes a decree-holder whether he has or has not applied for execution of his decree) to avoid a transfer on the ground that it has been made with intent to defeat or delay the creditors of the transferor, shall be instituted on behalf of, or for the benefit of, all the creditors

(2) Every transfer of immoveable property made without consideration with intent to defraud a subsequent transferee shall be voidable at the option of such transferee

For the purposes of this sub-section, no transfer made without consideration shall be deemed to have been made with intent to defraud by reason only that a subsequent transfer for consideration was made.]

Part per-
formance

¹[53A. Where any person contracts to transfer for consideration any immoveable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty,

and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract,

and the transferee has performed or is willing to perform his part of the contract,

then, notwithstanding that the contract, though required to be registered, has not been registered, or, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract.

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof]

CHAPTER III

OF SALES OF IMMOVEABLE PROPERTY

54. "Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised

"Sale"
defined

¹ Ins by the Transfer of Property (Amendment) Act, 1929 (20 of 1929), s. 16.

(Chapter III —Of Sales of Immoveable Property)

¹ Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument Sale how made

¹ In the case of tangible immoveable property, of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property

Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property

A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties Contract for sale

It does not, of itself, create any interest in or charge on such property

55. In the absence of a contract to the contrary, the buyer and the seller of immoveable property respectively are subject to the liabilities, and have the rights, mentioned in the rules next following, or such of them as are applicable to the property sold Rights and liabilities of buyer and seller

(1) The seller is bound—

- (a) to disclose to the buyer any material defect in the property ²[or in the seller's title thereto] of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover,
- (b) to produce to the buyer on his request for examination all documents of title relating to the property which are in the seller's possession or power,
- (c) to answer to the best of his information all relevant questions put to him by the buyer in respect to the property or the title thereto,
- (d) on payment or tender of the amount due in respect of the price, to execute a proper conveyance of the property when the buyer tenders it to him for execution at a proper time and place;
- (e) between the date of the contract of sale and the delivery of the property, to take as much care of the property and all documents of title relating thereto which are in his possession as an owner of ordinary prudence would take of such property and documents,
- (f) to give, on being so required, the buyer, or such person as he directs, such possession of the property as its nature admits,
- (g) to pay all public charges and rent accrued due in respect of the property up to the date of the sale, the interest on all incumbrances on such property due on such date, and,

¹ As to limitation to the territorial operation of paragraphs 2 and 3 of s 54, see s. 1, *supra*. These paragraphs extend to every cantonment in the Provinces—see s 287 of the Cantonments Act, 1924 (2 of 1924)

² Ins by the Transfer of Property (Amendment) Act, 1929 (20 of 1929), s 17

(Chapter III —Of Sales of Immoveable Property)

except where the property is sold subject to incumbrances, to discharge all incumbrances on the property then existing

(2) The seller shall be deemed to contract with the buyer that the interest which the seller professes to transfer to the buyer subsists and that he has power to transfer the same.

Provided that, where the sale is made by a person in a fiduciary character, he shall be deemed to contract with the buyer that the seller has done no act whereby the property is incumbered or whereby he is hindered from transferring it

The benefit of the contract mentioned in this rule shall be annexed to, and shall go with, the interest of the transferee as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested

(3) Where the whole of the purchase-money has been paid to the seller, he is also bound to deliver to the buyer all documents of title relating to the property which are in the seller's possession or power

Provided that, (a) where the seller retains any part of the property comprised in such documents, he is entitled to retain them all, and, (b) where the whole of such property is sold to different buyers, the buyer of the lot of greatest value is entitled to such documents. But in case (a) the seller, and in case (b) the buyer, of the lot of greatest value, is bound, upon every reasonable request by the buyer, or by any of the other buyers, as the case may be, and at the cost of the person making the request, to produce the said documents and furnish such true copies thereof or extracts therefrom as he may require, and in the meantime, the seller, or the buyer of the lot of greatest value, as the case may be, shall keep the said documents safe, uncanceled and undefaced, unless prevented from so doing by fire or other inevitable accident

(4) The seller is entitled—

(a) to the rents and profits of the property till the ownership thereof passes to the buyer,

(b) where the ownership of the property has passed to the buyer before payment of the whole of the purchase-money, to a charge upon the property in the hands of the buyer, ¹[any transferee without consideration or any transferee with notice of the non-payment], for the amount of the purchase-money, or any part thereof remaining unpaid, and for interest on such amount or part ¹[from the date on which possession has been delivered]

(5) The buyer is bound—

(a) to disclose to the seller any fact as to the nature or extent of the seller's interest in the property of which the buyer is

¹ Ins by the Transfer of Property (Amendment) Act, 1929 (20 of 1929), s 17.

(Chapter III —Of Sales of Immoveable Property)

aware but of which he has reason to believe that the seller is not aware, and which materially increases the value of such interest,

- (b) to pay or tender, at the time and place of completing the sale, the purchase-money to the seller or such person as he directs provided that, where the property is sold free from incumbrances, the buyer may retain out of the purchase-money the amount of any incumbrances on the property existing at the date of the sale, and shall pay the amount so retained to the persons entitled thereto ,
- (c) where the ownership of the property has passed to the buyer, to bear any loss arising from the destruction, injury or decrease in value of the property not caused by the seller ,
- (d) where the ownership of the property has passed to the buyer, as between himself and the seller, to pay all public charges and rent which may become payable in respect of the property, the principal moneys due on any incumbrances subject to which the property is sold, and the interest thereon afterwards accruing due
- (e) The buyer is entitled—
 - (a) where the ownership of the property has passed to him, to the benefit of any improvement in, or increase in value of, the property, and to the rents and profits thereof ,
 - (b) unless he has improperly declined to accept delivery of the property, to a charge on the property, as against the seller and all persons claiming under him, ¹* * * to the extent of the seller's interest in the property, for the amount of any purchase-money properly paid by the buyer in anticipation of the delivery and for interest on such amount , and, when he properly declines to accept the delivery, also for the earnest (if any) and for the costs (if any) awarded to him of a suit to compel specific performance of the contract or to obtain a decree for its rescission

An omission to make such disclosures as are mentioned in this section, paragraph (1), clause (a), and paragraph (5), clause (a), is fraudulent

²[56. If the owner of two or more properties mortgages them to one person and then sells one or more of the properties to another person, the buyer is, in the absence of a contract to the contrary, entitled to have the mortgage-debt satisfied out of the property or properties not sold to him, so far as the same will extend, but not so as to prejudice the rights of the mortgagee or persons claiming under him or of any other person

Marshalling
by subse-
quent
purchaser

¹ The words "with notice of the payment" rep by the Transfer of Property (Amendment) Act, 1929 (20 of 1929), s 17

² Subs by s 18, ibid., for the original section

(Chapter III —Of Sales of Immoveable Property)

who has for consideration acquired an interest in any of the properties]

Discharge of Incumbrances on Sale

Provision by
Court for in-
cumbrance
and sale freed
therefrom

57. (a) Where immoveable property subject to any incumbrance, whether immediately payable or not, is sold by the Court or in execution of a decree, or out of Court, the Court may, if it thinks fit, on the application of any party to the sale, direct or allow payment into Court,—

(1) in case of an annual or monthly sum charged on the property, or of a capital sum charged on a determinable interest in the property—of such amount as, when invested in securities of the ¹[Central Government], the Court considers will be sufficient, by means of the interest thereof, to keep down or otherwise provide for that charge, and

(2) in any other case of a capital sum charged on the property—of the amount sufficient to meet the incumbrance and any interest due thereon

But in either case there shall also be paid into Court such additional amount as the Court considers will be sufficient to meet the contingency of further costs, expenses and interest, and any other contingency, except depreciation of investments, not exceeding one-tenth part of the original amount to be paid in, unless the Court for special reasons (which it shall record) thinks fit to require a larger additional amount

(b) Thereupon the Court may, if it thinks fit, and after notice to the incumbrancer, unless the Court, for reasons to be recorded in writing, thinks fit to dispense with such notice, declare the property to be freed from the incumbrance, and make any order for conveyance, or vesting order, proper for giving effect to the sale, and give directions for the retention and investment of the money in Court

(c) After notice served on the persons interested in or entitled to the money or fund in Court, the Court may direct payment or transfer thereof to the persons entitled to receive or give a discharge for the same, and generally may give directions respecting the application or distribution of the capital or income thereof

(d) An appeal shall lie from any declaration, order or direction under this section as if the same were a decree

(e) In this section "Court" means (1) a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction, (2) the Court of a District Judge within the local limits of whose jurisdiction the property or any part thereof is situate, (3) any other Court which the ²[Provincial Government] may, from time to time, by notification in the Official Gazette, declare to be competent to exercise the jurisdiction conferred by this section

¹ Subs by the A O 1937 for "G of I"

² Subs by the A O 1937 for "L G"

(Chapter IV — Of Mortgages of Immoveable Property and Charges)

CHAPTER IV

OF MORTGAGES OF IMMOVEABLE PROPERTY AND CHARGES

58. (a) A mortgage is the transfer of an interest in specific immoveable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability

"Mortgage",
"mortgagor",
"mortgagee",
"mortgage-money", and
"mortgage-deed"
defined

The transferor is called a mortgagor, the transferee a mortgagee, the principal money and interest of which payment is secured for the time being are called the mortgage-money, and the instrument (if any) by which the transfer is effected is called a mortgage-deed

(b) Where, without delivering possession of the mortgaged property, the mortgagor binds himself personally to pay the mortgage money, and agrees, expressly or impliedly, that, in the event of his failing to pay according to his contract, the mortgagee shall have a right to cause the mortgaged property to be sold and the proceeds of sale to be applied, so far as may be necessary, in payment of the mortgage-money, the transaction is called a simple mortgage and the mortgagee a simple mortgagee.

Simple mortgage

(c) Where the mortgagor ostensibly sells the mortgaged property— on condition that on default of payment of the mortgage-money on a certain date the sale shall become absolute, or

Mortgage by conditional sale

on condition that on such payment being made the sale shall become void, or

on condition that on such payment being made the buyer shall transfer the property to the seller,

the transaction is called a mortgage by conditional sale and the mortgagee a mortgagee by conditional sale.

¹[Provided that no such transaction shall be deemed to be a mortgage, unless the condition is embodied in the document which effects or purports to effect the sale],

(d) Where the mortgagor delivers possession ¹[or expressly or by implication binds himself to deliver possession] of the mortgaged property to the mortgagee, and authorizes him to retain such possession until payment of the mortgage-money, and to receive the rents and profits accruing from the property ²[or any part of such rents and profits and to appropriate the same] in lieu of interest, or in payment of the mortgage-money, or partly in lieu of interest ³[or] partly in payment of the mortgage-money, the transaction is called an usufructuary mortgage and the mortgagee an usufructuary mortgage

Usufructuary mortgage

¹ Ins by the Transfer of Property (Amendment) Act, 1929 (20 of 1929), s 19

² Subs by s 19, *ibid*, for "and to appropriate them"

³ Subs by s 19, *ibid*, for "and"

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English mortgage

(e) Where the mortgagor binds himself to re-pay the mortgage-money on a certain date, and transfers the mortgaged property absolutely to the mortgagee, but subject to a proviso that he will re-transfer it to the mortgagor upon payment of the mortgage-money as agreed, the transaction is called an English mortgage

Mortgage by deposit of title-deeds

¹[(f) Where a person in any of the following towns, namely, the towns of Calcutta, Madras, ²[and Bombay], ³* * * * and in any other ⁴town which the ⁵[Provincial Government concerned] may, by notification in the ⁶[Official Gazette], specify in this behalf, delivers to a creditor or his agent documents of title to immoveable property, with intent to create a security thereon, the transaction is called a mortgage by deposit of title-deeds

Anomalous mortgage

(g) A mortgage which is not a simple mortgage, a mortgage by conditional sale, an usufructuary mortgage, an English mortgage or a mortgage by deposit of title-deeds within the meaning of this section is called an anomalous mortgage]

Mortgage when to be by assurance

⁷59. Where the principal money secured is one hundred rupees or upwards, a mortgage ⁸[other than mortgage by deposit of title-deeds] can be effected only by a registered instrument signed by the mortgagor and attested by at least two witnesses

Where the principal money secured is less than one hundred rupees, a mortgage may be effected either by ⁹[a registered instrument] signed and attested as aforesaid, or (except in the case of a simple mortgage) by delivery of the property

10* * * * *

References to mortgagors and mortgagees to include persons deriving title from them

¹¹[59A. Unless otherwise expressly provided, reference in this Chapter to mortgagors and mortgagees shall be deemed to include references to persons deriving title from them respectively.]

¹ Ins by the Transfer of Property (Amendment) Act, 1929 (20 of 1929), s 19

² Subs by the A O 1948 for "Bombay and Karachi" The word "and" had been ins by the A O 1937

³ The words "Rangoon, Moulmein, Bassein and Akyab" rep by the A O 1937

⁴ For notifications relating to the towns of—

Ahmedabad, see Gazette of India, 1935, Pt I, p 1064

Bandra, Kurla and Ghatkoper-Kirol, see Gazette of India, 1924, Pt I, p 1064

Cawnpore, Allahabad and Lucknow, see Gazette of India, 1933, Pt. I, p 158

Combatore, Madura, Cocanada and Cochin, see Gazette of India, 1935, Pt I, p 526

⁵ Subs by the A O 1937 for "G G in C"

⁶ Subs by the A O 1937 for "Gazette of India"

⁷ As to limitation to the territorial operation of s 59, see s 1, *supra*. S 59 extends to every cantonment in the Provinces—see s 287 of the Cantonments Act 1924 (2 of 1924)

⁸ Ins by Act 20 of 1929, s 20

⁹ Subs by the Transfer of Property (Amendment) Act, 1904 (6 of 1904), s 3, for "an instrument"

¹⁰ The third paragraph was rep by Act 20 of 1929, s 20

¹¹ Ins by s 21, *ibid*

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Rights and Liabilities of Mortgagor

60. At any time after the principal money has become ¹[due], the mortgagor has a right, on payment or tender, at a proper time and place, of the mortgage-money, to require the mortgagee (a) to deliver ²[to the mortgagor the mortgage-deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee], (b) where the mortgagee is in possession of the mortgaged property, to deliver possession thereof to the mortgagor, and (c) at the cost of the mortgagor either to re-transfer the mortgaged property to him or to such third person as he may direct, or to execute and (where the mortgage has been effected by a registered instrument) to have registered an acknowledgment in writing that any right in derogation of his interest transferred to the mortgagee has been extinguished

Right of
mortgagor
to redeem

Provided that the right conferred by this section has not been extinguished by the act of the parties or by ³[decree] of a Court

The right conferred by this section is called a right to redeem and a suit to enforce it is called a suit for redemption

Nothing in this section shall be deemed to render invalid any provision to the effect that, if the time fixed for payment of the principal money has been allowed to pass or no such time has been fixed, the mortgagee shall be entitled to reasonable notice before payment or tender of such money

Nothing in this section shall entitle a person interested in a share only of the mortgaged property to redeem his own share only, on payment of a proportionate part of the amount remaining due on the mortgage, except ⁴[only] where a mortgagee, or, if there are more mortgagees than one, all such mortgagees has or have acquired, in whole or in part, the share of a mortgagor

Redemption
of portion of
mortgaged
property

⁵[60A. (1) Where a mortgagor is entitled to redemption, then, on the fulfilment of any conditions on the fulfilment of which he would be entitled to require a re-transfer, he may require the mortgagee, instead of re-transferring the property, to assign the mortgage-debt and transfer the mortgaged property to such third person as the mortgagor may direct, and the mortgagee shall be bound to assign and transfer accordingly

Obligation to
transfer to
third party
instead of
re-trans-
ference to
mortgagor

(2) The rights conferred by this section belong to and may be enforced by the mortgagor or by any encumbrancer notwithstanding an intermediate encumbrance, but the requisition of any encumbrancer shall prevail over

¹ Subs by the Transfer of Property (Amendment) Act 1929 (20 of 1929), s 22 for "payable"

² Subs by s 22, *ibid*, for "the mortgage-deed, if any, to the mortgagor"

³ Subs by s 22, *ibid*, for "order"

⁴ Ins by s 22, *ibid*

⁵ Ss 60-A and 60-B ins by s 23, *ibid*

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a requisition of the mortgagor and, as between encumbrancers, the requisition of a prior encumbrancer shall prevail over that of a subsequent encumbrancer.

(3) The provisions of this section do not apply in the case of a mortgagee who is or has been in possession

Right to inspection and production of documents

60B. A mortgagor, as long as his right of redemption subsists, shall be entitled at all reasonable times, at his request and at his own cost, and on payment of the mortgagee's costs and expenses in this behalf, to inspect and make copies or abstracts of, or extracts from, documents of title relating to the mortgaged property which are in the custody or power of the mortgagee]

Right to redeem separately or simultaneously

¹**61** A mortgagor who has executed two or more mortgages in favour of the same mortgagee shall, in the absence of a contract to the contrary, when the principal money of any two or more of the mortgages has become due, be entitled to redeem any one such mortgage separately, or any two or more of such mortgages together]

Right of usufructuary mortgagor to recover possession

62. In the case of a usufructuary mortgage, the mortgagor has a right to recover possession of the property ²[together with the mortgage-deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee],—

(a) where the mortgagee is authorized to pay himself the mortgage-money from the rents and profits of the property,—when such money is paid ,

(b) where the mortgagee is authorized to pay himself from such rents and profits ³[or any part thereof a part only of the mortgage-money]—when the term, if any, prescribed for the payment of the mortgage-money has expired and the mortgagor pays or tenders to the mortgagee ⁴[the mortgage-money or the balance thereof] or deposits it in Court as hereinafter provided

Accession to mortgaged property

63. Where mortgaged property in possession of the mortgagee has, during the continuance of the mortgage, received any accession, the mortgagor, upon redemption, shall, in the absence of a contract to the contrary, be entitled as against the mortgagee to such accession

Accession acquired in virtue of transferred ownership

Where such accession has been acquired at the expense of the mortgagee, and is capable of separate possession or enjoyment without detriment to the principal property, the mortgagor desiring to take the accession must pay to the mortgagee the expense of acquiring it. If such separate possession or enjoyment is not possible, the accession must be delivered with the property, the mortgagor being liable, in the case of an acquisition necessary to preserve the property from destruction.

¹ Subs by the Transfer of Property (Amendment) Act, 1929 (20 of 1929), s 24, for the original section

² Ins by s 25, *ibid*

³ Subs by s 25, *ibid*, for "the interest of the principal money"

⁴ Subs by s 25, *ibid*, for "the principal money"

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forfeiture or sale, or made with his assent, to pay the proper cost thereof, as an addition to the principal money, ¹[with interest at the same rate as is payable on the principal, or, where no such rate is fixed, at the rate of nine per cent per annum].

In the case last mentioned the profits, if any, arising from the accession shall be credited to the mortgagor

Where the mortgage is usufructuary and the accession has been acquired at the expense of the mortgagee, the profits, if any, arising from the accession shall, in the absence of a contract to the contrary, be set off against interest, if any, payable on the money so expended

²[63A. (1) Where mortgaged property in possession of the mortgagee has, during the continuance of the mortgage, been improved, the mortgagor, upon redemption, shall, in the absence of a contract to the contrary, be entitled to the improvement; and the mortgagor shall not, save only in cases provided for in sub-section (2), be liable to pay the cost thereof

Improvements to mortgaged property

(2) Where any such improvement was effected at the cost of the mortgagee and was necessary to preserve the property from destruction or deterioration or was necessary to prevent the security from becoming insufficient, or was made in compliance with the lawful order of any public servant or public authority, the mortgagor shall, in the absence of a contract to the contrary, be liable to pay the proper cost thereof as an addition to the principal money with interest at the same rate as is payable on the principal, or, where no such rate is fixed, at the rate of nine per cent per annum, and the profits, if any, accruing by reason of the improvement shall be credited to the mortgagor]

64. Where the mortgaged property is a lease * * * *, and the mortgagee obtains a renewal of the lease, the mortgagor, upon redemption, shall, in the absence of a contract by him to the contrary, have the benefit of the new lease

Renewal of mortgaged lease

65. In the absence of a contract to the contrary, the mortgagor shall be deemed to contract with the mortgagee—

Implied contracts by mortgagor

- (a) that the interest which the mortgagor professes to transfer to the mortgagee subsists, and that the mortgagor has power to transfer the same;
- (b) that the mortgagor will defend, or if the mortgagee be in possession of the mortgaged property, enable him to defend, the mortgagor's title thereto;
- (c) that the mortgagor will, so long as the mortgagee is not in possession of the mortgaged property, pay all public charges accruing due in respect of the property,

¹ Subs by the Transfer of Property (Amendment) Act, 1929 (20 of 1929), s 26, for "at the same rate of interest"

² Ins by s 27, *ibid*

³ The words "for a term of years" rep by s 28, *ibid*

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(d) and, where the mortgaged property is a lease ¹* *, that the rent payable under the lease, the conditions contained therein, and the contracts binding on the lessee have been paid, performed and observed down to the commencement of the mortgage, and that the mortgagor will, so long as the security exists and the mortgagee is not in possession of the mortgaged property, pay the rent reserved by the lease, or, if the lease be renewed, the renewed lease, perform the conditions contained therein and observe the contracts binding on the lessee, and indemnify the mortgagee against all claims sustained by reason of the non-payment of the said rent or the non-performance or non-observance of the said conditions and contracts,

(e) and, where the mortgage is a second or subsequent incumbrance on the property, that the mortgagor will pay the interest from time to time accruing due on each prior incumbrance as and when it becomes due, and will at the proper time discharge the principal money due on such prior incumbrance

* * * *

The benefit of the contract, mentioned in this section shall be annexed to and shall go with the interest of the mortgagee as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested

Mortgagor's
power to
lease

³[65A. (1) Subject to the provisions of sub-section (2), a mortgagor, while lawfully in possession of the mortgaged property, shall have power to make leases thereof which shall be binding on the mortgagee

(2) (a) Every such lease shall be such as would be made in the ordinary course of management of the property concerned, and in accordance with any local law custom or usage

(b) Every such lease shall reserve the best rent that can reasonably be obtained, and no premium shall be paid or promised and no rent shall be payable in advance

(c) No such lease shall contain a covenant for renewal

(d) Every such lease shall take effect from a date not later than six months from the date on which it is made

(e) In the case of a lease of buildings, whether leased with or without the land on which they stand, the duration of the lease shall in no case exceed three years, and the lease shall contain a covenant for payment of the rent and a condition of re-entry on the rent not being paid within a time therein specified

¹ The words "for a term of years" rep by the Transfer of Property (Amendment) Act, 1929 (20 of 1929), s 29

² Certain words were rep by s 29, *ibid*

³ S 65-A ins by s 30, *ibid*.

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(3) The provisions of sub-section (1) apply only if and as far as a contrary intention is not expressed in the mortgage-deed, and the provisions of sub-section (2) may be varied or extended by the mortgage-deed and, as so varied and extended, shall, as far as may be, operate in like manner and with all like incidents, effects and consequences, as if such variations or extensions were contained in that sub-section]

66. A mortgagor in possession of the mortgaged property is not liable to the mortgagee for allowing the property to deteriorate, but he must not commit any act which is destructive or permanently injurious thereto, if the security is insufficient or will be rendered insufficient by such act Waste by mortgagor in possession

Explanation —A security is insufficient within the meaning of this section unless the value of the mortgaged property exceeds by one-third, or, if consisting of buildings, exceeds by one-half, the amount for the time being due on the mortgage

Rights and Liabilities of Mortgagee

67. In the absence of a contract to the contrary, the mortgagee has at any time after the mortgage-money has become ¹[due] to him, and before a decree has been made for the redemption of the mortgaged property, or the mortgage-money has been paid or deposited as hereinafter provided, a right to obtain from the Court ²[a decree] that the mortgagor shall be absolutely debarred of his right to redeem the property, or ²[a decree] that the property be sold Right to foreclosure or sale

A suit to obtain ²[a decree] that a mortgagor shall be absolutely debarred of his right to redeem the mortgaged property is called a suit for foreclosure.

Nothing in this section shall be deemed—

- ³[(a) to authorize any mortgagee other than a mortgagee by conditional sale or a mortgagee under an anomalous mortgage by the terms of which he is entitled to foreclose, to institute a suit for foreclosure, or an usufructuary mortgagee as such or a mortgagee by conditional sale as such to institute a suit for sale, or]
- (b) to authorize a mortgagor who holds the mortgagee's rights as his trustee or legal representative, and who may sue for a sale of the property, to institute a suit for foreclosure, or
- (c) to authorize the mortgagee of a railway, canal or other work in the maintenance of which the public are interested, to institute a suit for foreclosure or sale ; or

¹ Subs by the Transfer of Property (Amendment) Act, 1929 (20 of 1929), s 31, for "payable"

² Subs by s 31, *ibid*, for "an order"

³ Subs by s 31, *ibid*, for the original clause

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- (d) to authorize a person interested in part only of the mortgage-money to institute a suit relating only to a corresponding part of the mortgaged property, unless the mortgagees have, with the consent of the mortgagor, severed their interests under the mortgage.

Mortgagee
when bound
to bring one
suit on several
mortgages

¹[67A. A mortgagee who holds two or more mortgages executed by the same mortgagor in respect of each of which he has a right to obtain the same kind of decree under section 67, and who sues to obtain such decree on any one of the mortgages, shall, in the absence of a contract to the contrary, be bound to sue on all the mortgages in respect of which the mortgage-money has become due]

Right to sue
for mortgage-
money

²[68. (1) The mortgagee has a right to sue for the mortgage-money in the following cases and no others, namely —

- (a) where the mortgagor binds himself to repay the same ,
- (b) where, by any cause other than the wrongful act or default of the mortgagor or mortgagee, the mortgaged property is wholly or partially destroyed or the security is rendered insufficient within the meaning of section 66, and the mortgagee has given the mortgagor a reasonable opportunity of providing further security enough to render the whole security sufficient, and the mortgagor has failed to do so ,
- (c) where the mortgagee is deprived of the whole or part of his security by or in consequence of the wrongful act or default of the mortgagor ,
- (d) where, the mortgagee being entitled to possession of the mortgaged property, the mortgagor fails to deliver the same to him, or to secure the possession thereof to him without disturbance by the mortgagor or any person claiming under a title superior to that of the mortgagor

Provided that, in the case referred to in clause (a), a transferee from the mortgagor or from his legal representative shall not be liable to be sued for the mortgage-money

(2) Where a suit is brought under clause (a) or clause (b) of subsection (1), the Court may, at its discretion, stay the suit and all proceedings therein, notwithstanding any contract to the contrary, until the mortgagee has exhausted all his available remedies against the mortgaged property or what remains of it, unless the mortgagee abandons his security and, if necessary, re-transfers the mortgaged property]

¹ Ins by the Transfer of Property (Amendment) Act, 1929 (20 of 1929), s 32.

² Subs by s 33, *ibid*, for the original section

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CXVIII of
1866

69. ¹[(1)] ²~~Notwithstanding anything contained in the Trustees' and Mortgagees' Powers Act, 1866,~~ ³A mortgagee, or any person acting on his behalf, shall, subject to the provisions of this section, have power to sell or concur in selling the mortgaged property, or any part thereof, in default of payment of the mortgage-money, without the intervention of the Court, in the following cases and in no others, namely —

+ LVI/1
Power of sale
when valid

(a) where the mortgage is an English mortgage, and neither the mortgagor nor the mortgagee is a Hindu, Muhammadan or Buddhist ³[or a member of any other race, sect, tribe or class from time to time specified in this behalf by ⁴[the ~~Pro-~~ ^{state}vincial Government]], in the ⁵[Official Gazette]],

(b) where ⁶[a power of sale without the intervention of the Court is expressly conferred on the mortgagee by the mortgage-deed and] the mortgagee is ⁷[the Crown; ~~G~~ ^{Government}]

(c) where ⁸[a power of sale without the intervention of the Court is expressly conferred on the mortgagee by the mortgage-deed and] the mortgaged property or any part thereof ⁹[was, on the date of the execution of the mortgage-deed], situate within the towns of Calcutta, Madras, Bombay, ¹⁰*, ^{10*} * * * or in any other ¹¹town ⁶[or area] which the ¹²~~Pro-~~ ^{state}vincial Government] may, by notification in the ¹³[Official Gazette], specify in this behalf

¹⁴* ¹⁵[(2)] no such power shall be exercised unless and until—

¹⁶[(a)] notice in writing requiring payment of the principal money has been served on the mortgagor, or on one of several mortgagors, and default has been made in payment of the principal money, or of part thereof, for three months after such service, or

¹ S 69 was numbered as sub-section (2) by the Transfer of Property (Amendment) Act, 1929 (20 of 1929), s. 34

² Subs by s 34, *ibid*, for the original words

³ Ins by the Transfer of Property Act (1882) Amendment Act, 1885 (3 of 1885),

s 5

⁴ Subs by the A O 1937 for "the L G, with the previous sanction of the G in C"

⁵ Subs by the A O 1937 for "local official Gazette".

⁶ Ins by Act 20 of 1929, s 34

⁷ Subs by the A O 1937 for "the Secretary of State for India in Council".

⁸ Subs by Act 20 of 1929, s 34, for "is"

⁹ The word "Karachi" rep by the A O 1948

¹⁰ The words "Rangoon, Moulmein, Bassein, Akyab" rep by the A O 1937

¹¹ See foot-note 4 on p 62, *supra*

¹² Subs by the A O 1937 for "G G in C"

¹³ Subs by the A O 1937 for "Gazette of India".

¹⁴ The word "but" rep by Act 20 of 1929, s 34

¹⁵ This part was numbered as sub-section (2) by s 34, *ibid*

¹⁶ This clause was lettered (a) by s 34, *ibid*

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¹[(b)] some interest under the mortgage amounting at least to five hundred rupees is in arrear and unpaid for three months after becoming due

²[(3)] When a sale has been made in professed exercise of such a power, the title of the purchaser shall not be impeachable on the ground that no case had arisen to authorize the sale, or that due notice was not given, or that the power was otherwise improperly or irregularly exercised, but any person damaged by an unauthorized or improper or irregular exercise of the power shall have his remedy in damages against the person exercising the power

³[(4)] The money which is received by the mortgagee, arising from the sale, after discharge of prior incumbrances, if any, to which the sale is not made subject, or after payment into Court under section 57 of a sum to meet any prior incumbrance, shall, in the absence of a contract to the contrary, be held by him in trust to be applied by him, first, in payment of all costs, charges and expenses properly incurred by him as incident to the sale or any attempted sale, and, secondly, in discharge of the mortgage-money and costs and other money, if any, due under the mortgage, and the residue of the money so received shall be paid to the person entitled to the mortgaged property, or authorised to give receipts for the proceeds of the sale thereof

⁴[(5) Nothing in this section or in section 69A applies to powers conferred before the first day of July, 1882]

* * * * *

Appointment
of receiver.

⁶[69A. (1) A mortgagee having the right to exercise a power of sale under section 69 shall, subject to the provisions of sub-section (2), be entitled to appoint, by writing signed by him or on his behalf, a receiver of the income of the mortgaged property or any part thereof

(2) Any person who has been named in the mortgage-deed and is willing and able to act as receiver may be appointed by the mortgagee

If no person has been so named, or if all persons named are unable or unwilling to act, or are dead, the mortgagee may appoint any person to whose appointment the mortgagor agrees, failing such agreement, the mortgagee shall be entitled to apply to the Court for the appointment of a receiver, and any person appointed by the Court shall be deemed to have been duly appointed by the mortgagee

¹ This clause was lettered (b) by s 34 of the Transfer of Property (Amendment) Act, 1929 (20 of 1929)

² This part was numbered as sub-section (3) by s 34, *ibid*

³ This part was numbered as sub-section (4) by s 34, *ibid*

⁴ This sub-section was subs by s 34, *ibid*, for what was originally the fifth paragraph of the section

⁵ The last paragraph of the section was rep by s. 34, *ibid*

⁶ Ins by s 35, *ibid*.

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A receiver may at any time be removed by writing signed by or on behalf of the mortgagee and the mortgagor, or by the Court on application made by either party and on due cause shown.

A vacancy in the office of receiver may be filled in accordance with the provisions of this sub-section

(3) A receiver appointed under the powers conferred by this section shall be deemed to be the agent of the mortgagor, and the mortgagor shall be solely responsible for the receiver's acts or defaults, unless the mortgage-deed otherwise provides or unless such acts or defaults are due to the improper intervention of the mortgagee

(4) The receiver shall have power to demand and recover all the income of which he is appointed receiver, by suit, execution or otherwise, in the name either of the mortgagor or of the mortgagee to the full extent of the interest which the mortgagor could dispose of, and to give valid receipts accordingly for the same, and to exercise any powers which may have been delegated to him by the mortgagee in accordance with the provisions of this section

(5) A person paying money to the receiver shall not be concerned to inquire if the appointment of the receiver was valid or not

(6) The receiver shall be entitled to retain out of any money received by him, for his remuneration, and in satisfaction of all costs, charges and expenses incurred by him as receiver, a commission at such rate not exceeding five per cent on the gross amount of all money received as is specified in his appointment, and, if no rate is so specified, then at the rate of five per cent on that gross amount, or at such other rate as the Court thinks fit to allow, on application made by him for that purpose

(7) The receiver shall, if so directed in writing by the mortgagee, insure to the extent, if any, to which the mortgagee might have insured, and keep insured against loss or damage by fire, out of the money received by him, the mortgaged property or any part thereof being of an insurable nature.

(8) Subject to the provisions of this Act as to the application of insurance money, the receiver shall apply all money received by him as follows, namely,—

- (i) in discharge of all rents, taxes, land revenue, rates and outgoings whatever affecting the mortgaged property,
- (ii) in keeping down all annual sums or other payments, and the interest on all principal sums, having priority to the mortgage in right whereof he is receiver,
- (iii) in payment of his commission, and of the premiums on fire, life or other insurances, if any, properly payable under the mortgage-deed or under this Act, and the cost of executing

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necessary or proper repairs directed in writing by the mortgagee ,

(iv) in payment of the interest falling due under the mortgage ;

(v) in or towards discharge of the principal money, if so directed in writing by the mortgagee ;

and shall pay the residue, if any, of the money received by him to the person who, but for the possession of the receiver, would have been entitled to receive the income of which he is appointed receiver, or who is otherwise entitled to the mortgaged property

(9) The provisions of sub-section (1) apply only if and as far as a contrary intention is not expressed in the mortgage-deed , and the provisions of sub-sections (3) to (8) inclusive may be varied or extended by the mortgage-deed, and, as so varied or extended, shall, as far as may be, operate in like manner and with all the like incidents, effects and consequences, as if such variations or extensions were contained in the said sub-sections

(10) Application may be made, without the institution of a suit, to the Court for its opinion, advice or direction on any present question respecting the management or administration of the mortgaged property, other than questions of difficulty or importance not proper in the opinion of the Court for summary disposal. A copy of such application shall be served upon, and the hearing thereof may be attended by, such of the persons interested in the application as the Court may think fit

The costs of every application under this sub-section shall be in the discretion of the Court

(11) In this section, " the Court " means the Court which would have jurisdiction in a suit to enforce the mortgage]

Accession to
mortgaged
property

70. If, after the date of a mortgage, any accession is made to the mortgaged property, the mortgagee, in the absence of a contract to the contrary, shall, for the purposes of the security, be entitled to such accession

Illustrations

(a) A mortgages to B a certain field bordering on a river. The field is increased by alluvion. For the purposes of his security, B is entitled to the increase

(b) A mortgages a certain plot of building land to B and afterwards erects a house on the plot. For the purposes of his security B is entitled to the house as well as the plot

Renewal of
mortgaged
lease

71. When the mortgaged property is a lease ¹* * *, and the mortgagor obtains a renewal of the lease, the mortgagee, in the absence of a contract to the contrary, shall, for the purposes of the security, be entitled to the new lease

¹ The words " for a term of years " rep. by the Transfer of Property (Amendment) Act, 1929 (20 of 1929), s. 36

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72. ¹[A mortgagee] may spend such money as is necessary—

Rights of
mortgagee
in possession

² * * * *

(b) for ³[the preservation of the mortgaged property] from destruction, forfeiture or sale ,

(c) for supporting the mortgagor's title to the property ,

(d) for making his own title thereto good against the mortgagor , and,

(e) when the mortgaged property is a renewable lease-hold, for the renewal of the lease ,

and may, in the absence of a contract to the contrary, add such money to the principal money, at the rate of interest payable on the principal, and where no such rate is fixed, at the rate of nine per cent per annum

⁴[Provided that the expenditure of money by the mortgagee under clause (b) or clause (c) shall not be deemed to be necessary unless the mortgagor has been called upon and has failed to take proper and timely steps to preserve the property or to support the title]

Where the property is by its nature insurable, the mortgagee may also, in the absence of a contract to the contrary, insure and keep insured against loss or damage by fire the whole or any part of such property , and the premiums paid for any such insurance shall be ⁵[added to the principal money with interest at the same rate as is payable on the principal money or, where no such rate is fixed, at the rate of nine per cent per annum] But the amount of such insurance shall not exceed the amount specified in this behalf in the mortgage-deed or (if no such amount is therein specified) two-thirds of the amount that would be required in case of total destruction to reinstate the property insured

Nothing in this section shall be deemed to authorize the mortgagee to insure when an insurance of the property is kept up by or on behalf of the mortgagor to the amount in which the mortgagee is hereby authorized to insure.

⁶[73. (1) Where the mortgaged property or any part thereof or any interest therein is sold owing to failure to pay arrears of revenue or other charges of a public nature or rent due in respect of such property, and such failure did not arise from any default of the mortgagee, the mortgagee shall be entitled to claim payment of the mortgage-money, in whole or in part, out of any surplus of the sale proceeds remaining after

Right to
proceeds of
revenue sale
or compen-
sation on
acquisition

¹ Subs by the Transfer of Property (Amendment) Act, 1929 (20 of 1929), s 37, for " When, during the continuance of the mortgage, the mortgagee takes possession of the mortgaged property, he "

² Clause (a) was rep by s 37, *ibid*

³ Subs by s 37, *ibid*, for "its preservation "

⁴ Ins. by s 37, *ibid*

⁵ Subs by s 37, *ibid*, for the original words

⁶ Subs by s 38, *ibid*, for the original section

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payment of the arrears and of all charges and deductions directed by law

(2) Where the mortgaged property or any part thereof or any interest therein is acquired under the Land Acquisition Act, 1894, or any other enactment for the time being in force providing for the compulsory acquisition of immoveable property, the mortgagee shall be entitled to claim payment of the mortgage-money, in whole or in part, out of the amount due to the mortgagor as compensation 1 of 1894

(3) Such claims shall prevail against all other claims except those of prior encumbrancers, and may be enforced notwithstanding that the principal money on the mortgage has not become due]

74. [Right of subsequent mortgagee to pay off prior mortgagee]
Rep by s 39 of the Transfer of Property (Amendment) Act, 1929 (XX of 1929)

75. [Rights of mesne mortgagee against prior and subsequent mortgagees] Rep by s 39 of the Transfer of Property (Amendment) Act, 1929 (XX of 1929)

Liabilities of
mortgagee in
possession

76. When, during the continuance of the mortgage, the mortgagee takes possession of the mortgaged property,—

- (a) he must manage the property as a person of ordinary prudence would manage it if it were his own ,
- (b) he must use his best endeavours to collect the rents and profits thereof ,
- (c) he must, in the absence of a contract to the contrary, out of the income of the property, pay the Government revenue, all other charges of a public nature ¹[and all rent] accruing due in respect thereof during such possession, and any arrears of rent in default of payment of which the property may be summarily sold ;
- (d) he must, in the absence of a contract to the contrary, make such necessary repairs of the property as he can pay for out of the rents and profits thereof after deducting from such rents and profits the payments mentioned in clause (c) and the interest on the principal money ,
- (e) he must not commit any act which is destructive or permanently injurious to the property ,
- (f) where he has insured the whole or any part of the property against loss or damage by fire, he must, in case of such loss or damage, apply any money which he actually receives under the policy or so much thereof as may be necessary, in reinstating the property, or, if the mortgagor so directs, in reduction or discharge of the mortgage-money ,

¹ Ins by the Transfer of Property (Amendment) Act, 1929 (20 of 1929), s 40

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- (g) he must keep clear, full and accurate accounts of all sums received and spent by him as mortgagee, and, at any time during the continuance of the mortgage, give the mortgagor, at his request and cost, true copies of such accounts and of the vouchers by which they are supported,
- (h) his receipts from the mortgaged property, or, where such property is personally occupied by him, a fair occupation-rent in respect thereof, shall, after deducting the expenses ¹[properly incurred for the management of the property and the collection of rents and profits and the other expenses] mentioned in clauses (c) and (d), and interest thereon, be debited against him in reduction of the amount (if any) from time to time due to him on account of interest ² * * and, so far as such receipts exceed any interest due, in reduction or discharge of the mortgage-money, the surplus, if any, shall be paid to the mortgagor,
- (i) when the mortgagor tenders, or deposits in manner hereinafter provided, the amount for the time being due on the mortgage, the mortgagee must, notwithstanding the provisions in the other clauses of this section, account for his ³ * receipts from the mortgaged property from the date of the tender or from the earliest time when he could take such amount out of Court, as the case may be ¹[and shall not be entitled to deduct any amount therefrom on account of any expenses incurred after such date or time in connection with the mortgaged property]

If the mortgagee fail to perform any of the duties imposed upon him by this section, he may, when accounts are taken in pursuance of a decree made under this chapter, be debited with the loss, if any, occasioned by such failure Loss occasioned by his default

77. Nothing in section 76, clauses (b), (d), (g) and (h), applies to cases where there is a contract between the mortgagee and the mortgagor that the receipts from the mortgaged property shall, so long as the mortgagee is in possession of the property, be taken in lieu of interest on the principal money, or in lieu of such interest and defined portions of the principal Receipts in lieu of interest

Priority

78. Where, through the fraud, misrepresentation or gross neglect of a prior mortgagee, another person has been induced to advance money Postponement of prior mortgagee

¹ Ins by the Transfer of Property (Amendment) Act, 1929 (20 of 1929), s 40

² The words "on the mortgage-money" rep by s 40, *ibid*.

³ The word "gross" rep by s 40, *ibid*

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on the security of the mortgaged property, the prior mortgagee shall be postponed to the subsequent mortgagee

Mortgage to secure uncertain amount when maximum is expressed

79. If a mortgage made to secure future advances, the performance of an engagement or the balance of a running account, expresses the maximum to be secured thereby, a subsequent mortgage of the same property shall, if made with notice of the prior mortgage, be postponed to the prior mortgage in respect of all advances or debits not exceeding the maximum, though made or allowed with notice of the subsequent mortgage

Illustration

A mortgages Sultanpur to his bankers, B & Co., to secure the balance of his account with them to the extent of Rs 10,000. A then mortgages Sultanpur to C, to secure Rs 10,000, C having notice of the mortgage to B & Co., and C gives notice to B & Co. of the second mortgage. At the date of the second mortgage, the balance due to B & Co. does not exceed Rs 5,000. B & Co. subsequently advance to A sums making the balance of the account against him exceed the sum of Rs 10,000. B & Co. are entitled, to the extent of Rs 10,000, to priority over C.

80. [Tacking abolished] Rep by s 41 of the Transfer of Property (Amendment) Act, 1929 (XX of 1929)

Marshalling and Contribution

Marshalling securities

¹[81. If the owner of two or more properties mortgages them to one person and then mortgages one or more of the properties to another person, the subsequent mortgagee is, in the absence of a contract to the contrary, entitled to have the prior mortgage-debt satisfied out of the property or properties not mortgaged to him, so far as the same will extend, but not so as to prejudice the rights of the prior mortgagee or of any other person who has for consideration acquired an interest in any of the properties]

Contribution to mortgage-debt

82. ²[Where property subject to a mortgage belongs to two or more persons having distinct and separate rights of ownership therein, the different shares in or parts of such property owned by such persons are, in the absence of a contract to the contrary, liable to contribute rateably to the debt secured by the mortgage, and, for the purpose of determining the rate at which each such share or part shall contribute, the value thereof shall be deemed to be its value at the date of the mortgage after deduction of the amount of any other mortgage or charge to which it may have been subject on that date]

Where, of two properties belonging to the same owner, one is mortgaged to secure one debt and then both are mortgaged to secure another debt, and the former debt is paid out of the former property, each

¹ Subs by the Transfer of Property (Amendment) Act, 1929 (20 of 1929), s 42, for the original section

² Subs. by s 43, *ibid.*, for the original paragraph

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property is, in the absence of a contract to the contrary, liable to contribute rateably to the latter debt after deducting the amount of the former debt from the value of the property out of which it has been paid

Nothing in this section applies to a property liable under section 81 to the claim of the ¹[subsequent] mortgagee

Deposit in Court

83. At any time after the principal money ²[payable in respect of any mortgage has become due] and before a suit for redemption of the mortgaged property is barred, the mortgagor, or any other person entitled to institute such suit, may deposit, in any Court in which he might have instituted such suit, to the account of the mortgagee, the amount remaining due on the mortgage

Power to deposit in Court money due on mortgage

The Court shall thereupon cause written notice of the deposit to be served on the mortgagee, and the mortgagee may, on presenting a petition (verified in manner prescribed by law³ for the verification of plaints) stating the amount then due on the mortgage, and his willingness to accept the money so deposited in full discharge of such amount, and on depositing in the same Court the mortgage-deed ⁴[and all documents in his possession or power relating to the mortgaged property], apply for and receive the money, and the mortgage-deed ⁵[and all such other documents] so deposited shall be delivered to the mortgagor or such other person as aforesaid

Right to money deposited by mortgagor

⁶[Where the mortgagee is in possession of the mortgaged property, the Court shall, before paying to him the amount so deposited, direct him to deliver possession thereof to the mortgagor and at the cost of the mortgagor either to re-transfer the mortgaged property to the mortgagor or to such third person as the mortgagor may direct or to execute and (where the mortgage has been effected by a registered instrument) have registered an acknowledgment in writing that any right in derogation of the mortgagor's interest transferred to the mortgagee has been extinguished]

84. When mortgagor or such other person as aforesaid has tendered or deposited in Court under section 83 the amount remaining due on the mortgage, interest on the principal money shall cease from the date of the tender or ⁷[in the case of a deposit, where no previous tender of such amount has been made] as soon as the mortgagor or such other person as aforesaid has done all that has to be done by him to enable the mortgagee to take

Cessation of interest

¹Subs by the Transfer of Property (Amendment) Act, 1929 (20 of 1929), s 43, for "second"

² Subs by s 44, *ibid*, for "has become payable"

³ See the Code of Civil Procedure, 1908 (Act 5 of 1908), Sch I, Order VI, rule 15

⁴ Subs by Act 20 of 1929, s 44, for "if then in his possession or power"

⁵ Ins by s 44, *ibid*

⁶ Ins by s. 45, *ibid*.

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such amount out of Court, ¹[and the notice required by section 83 has been served on the mortgagee

Provided that, where the mortgagor has deposited such amount without having made a previous tender thereof and has subsequently withdrawn the same or any part thereof, interest on the principal money shall be payable from the date of such withdrawal]

Nothing in this section or in section 83 shall be deemed to deprive the mortgagee of his right to interest when there exists a contract that he shall be entitled to reasonable notice before payment or tender of the mortgage-money ²[and such notice has not been given before the making of the tender or deposit, as the case may be]

³*Suits for Foreclosure, Sale or Redemption*

85. [*Partes to suits for foreclosure, sale and redemption*] Rep by the Code of Civil Procedure, 1908 (Act V of 1908), s 156 and Sch V.

³*Foreclosure and Sale*

[86 to 90.] Rep by the Code of Civil Procedure, 1908 (Act V of 1908), s 156 and Sch V

Redemption

Persons who
may sue for
redemption

⁴[91. Besides the mortgagor, any of the following persons may redeem, or institute a suit for redemption of, the mortgaged property, namely —

(a) any person (other than the mortgagee of the interest sought to be redeemed) who has any interest in, or charge upon, the property mortgaged or in or upon the right to redeem the same ;

(b) any surety for the payment of the mortgage-debt or any part thereof , or

(c) any creditor of the mortgagor who has in a suit for the administration of his estate obtained a decree for sale of the mortgaged property]

Subrogation

⁵[92 Any of the persons referred to in section 91 (other than the mortgagor) and any co-mortgagor shall, on redeeming property subject to the mortgage, have, so far as regards redemption, foreclosure or sale of such property, the same rights as the mortgagee whose mortgage he redeems may have against the mortgagor or any other mortgagee.

¹ Subs by the Transfer of Property (Amendment) Act, 1929 (20 of 1929), s 45, for "as the case may be"

² Ins by s 45, *ibid*

³ For the repealed provisions, as re-enacted, see the Code of Civil Procedure, 1908 (Act 5 of 1908), Sch I, Order XXXIV

⁴ Subs by Act 20 of 1929, s 46, for the original section for the original section

⁵ Ss 92 to 94 were ins by s 47, *ibid*

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The right conferred by this section is called the right of subrogation, and a person acquiring the same is said to be subrogated to the rights of the mortgagee whose mortgage he redeems

A person who has advanced to a mortgagor money with which the mortgage has been redeemed shall be subrogated to the rights of the mortgagee whose mortgage has been redeemed, if the mortgagor has by a registered instrument agreed that such persons shall be so subrogated

Nothing in this section shall be deemed to confer a right of subrogation on any person unless the mortgage in respect of which the right is claimed has been redeemed in full

93 No mortgagee paying off a prior mortgage, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his original security, and, except in the case provided for by section 79, no mortgagee making a subsequent advance to the mortgagor, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his security for such subsequent advance

Prohibition of tacking

94 Where a property is mortgaged for successive debts to successive mortgagees, a mesne mortgagee has the same rights against mortgagees posterior to himself as he has against the mortgagor]

Rights of mesne mortgagee

¹[95. Where one of several mortgagors redeems the mortgaged property, he shall, in enforcing his right of subrogation under section 92 against his co-mortgagors, be entitled to add to the mortgage-money recoverable from them such proportion of the expenses properly incurred in such redemption as is attributable to their share in the property

Right of redeeming co-mortgagor to expenses

96 The provisions hereinbefore contained which apply to a simple mortgage shall, so far as may be, apply to a mortgage by deposit of title-deeds]

Mortgage by deposit of title-deeds

²97. [Application of proceeds] *Reg. by the Code of Civil Procedure, 1908 (Act V of 1908), s. 156 and Sch. V.*

Anomalous Mortgages

98 In the case of ³[an anomalous mortgage] the rights and liabilities of the parties shall be determined by their contract as evidenced in the mortgage-deed, and, so far as such contract does not extend, by local usage

Rights and liabilities of parties to anomalous mortgages

¹ Ss 95 and 96 were subs. by the Transfer of Property (Amendment) Act, 1929 (20 of 1929), s. 48, for the original section 95

² For the repealed provisions as re-enacted, see the Code of Civil Procedure, 1908 (Act 5 of 1908), Sch. I, Order XXXIV, rules 12 and 13

³ Subs. by Act 20 of 1929, s. 49, for "a mortgage, not being a simple mortgage, a mortgage by conditional sale, an usufructuary mortgage or an English mortgage or a combination of the first and third, or the second and third, of such forms"

(Chapter IV —Of Mortgages of Immoveable Property and Charges.)

¹99. [Attachment of mortgaged property] Rep by the Code of Civil Procedure, 1908 (Act V of 1908), s 156 and Sch V

Charges

Charges

100. Where immoveable property of one person is by act of parties or operation of law made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property, and all the provisions hereinbefore contained ²[which apply to a simple mortgage shall, so far as may be, apply to such charge]

Nothing in this section applies to the charge of a trustee on the trust-property for expenses properly incurred in the execution of his trust, ¹[and, save as otherwise expressly provided by any law for the time being in force, no charge shall be enforced against any property in the hands of a person to whom such property has been transferred for consideration and without notice of the charge].

No merger
in case of
subsequent
encumbrance

⁴[101. Any mortgagee of, or person having a charge upon, immoveable property, or any transferee from such mortgagee or charge holder, may purchase or otherwise acquire the rights in the property of the mortgagor or owner, as the case may be without thereby causing the mortgage or charge to be merged as between himself and any subsequent mortgagee of, or person having a subsequent charge upon, the same property, and no such subsequent mortgagee or charge-holder shall be entitled to foreclose or sell such property without redeeming the prior mortgage or charge, or otherwise than subject thereto]

Notice and Tender.

Service or
tender on or
to agent

102. Where the person on or to whom any notice or tender is to be served or made under this Chapter does not reside in the district in which the mortgaged property or some part thereof is situate, service or tender on or to an agent holding a general power-of-attorney from such person or otherwise duly authorized to accept such service or tender shall be deemed sufficient

⁵[Where no person or agent on whom such notice should be served can be found or is known] to the person required to serve the notice, the latter person may apply to any Court in which a suit might be

¹ For the repealed provisions as re-enacted, see Act 5 of 1908, Sch I, Order XXXIV, rule 14

² Subs by the Transfer of Property (Amendment) Act, 1929 (20 of 1929), s. 50, for "as to a mortgagor shall, so far as may be, apply to the owner of such property, and the provisions of ss 81 and 82 shall, so far as may be, apply to such charge"

³ Ins by s 50, *ibid*

⁴ Subs by s 51, *ibid*, for the original section

⁵ Subs by s 52, *ibid*, for "Where the person or agent on whom such notice should be served cannot be found in the said district, or is unknown".

(Chapter IV.—Of Mortgages of Immoveable Property and Charges)

brought for redemption of the mortgaged property, and such Court shall direct in what manner such notice shall be served, and any notice served in compliance with such direction shall be deemed sufficient.

¹[Provided that, in the case of a notice required by section 83, in the case of a deposit, the application shall be made to the Court in which the deposit has been made]

²[Where no person or agent to whom such tender should be made can be found or is known] to the person desiring to make the tender, the latter person may deposit ³[in any Court in which a suit might be brought for redemption of the mortgaged property] the amount sought to be tendered, and such deposit shall have the effect of a tender of such amount.

103. Where, under the provisions of this Chapter, a notice is to be served on or by, or a tender or deposit made or accepted or taken out of Court by, any person incompetent to contract, such notice may be served ⁴[on or by], or tender or deposit made, accepted or taken, by the legal curator of the property of such person, but where there is no such curator, and it is requisite or desirable in the interests of such person that a notice should be served or a tender or deposit made under the provisions of this Chapter, application may be made to any Court in which a suit might be brought for the redemption of the mortgage to appoint a guardian *ad litem* for the purpose of serving or receiving service of such notice, or making or accepting such tender, or making or taking out of Court such deposit, and for the performance of all consequential acts which could or ought to be done by such person if he were competent to contract⁵, and the provisions of ⁶[Order XXXII in the First Schedule to the Code of Civil Procedure, 1908] shall, so far as may be, apply to such application and to the parties thereto and to the guardian appointed thereunder

Notice, etc.,
to or by
person
incompetent
to contract

104. The High Court may, from time to time, make rules consistent with this Act for carrying out, in itself and in the Courts of Civil Judicature subject to its superintendence, the provisions contained in this Chapter

Power to
make rules.

¹ Ins by the Transfer of Property (Amendment) Act, 1929 (20 of 1929), s 52

² Subs by s 52, *ibid*, for "Where the person or agent to whom such tender should be made cannot be found within the said district, or is unknown"

³ Subs by s 52, *ibid*., for "in such Court as last aforesaid"

⁴ Ins by s 53, *ibid*

⁵ As to persons competent to contract, see ss 11 and 12 of the Indian Contract Act, 1872 (9 of 1872)

⁶ Subs by Act 20 of 1929, s 53, for "Chapter XXX of the Code of Civil Procedure"

(Chapter V—Of Leases of Immoveable Property)

CHAPTER V

OF LEASES OF IMMOVEABLE PROPERTY

lease
defined

105. A lease of immoveable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms

lessor, lessee,
premium and
rent defined

The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent

duration of
certain
leases in
absence of
written con-
tract or
local usage

106. In the absence of a contract or local law or usage to the contrary, a lease of immoveable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice expiring with the end of a year of the tenancy, and a lease of immoveable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice expiring with the end of a month of the tenancy.

Every notice under this section must be in writing signed by or on behalf of the person giving it, and ¹[either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party], or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property

leases how
made

²107. A lease of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument

³[All other leases of immoveable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession]

⁴[Where a lease of immoveable property is made by a registered instrument, such instrument or, where there are more instruments than one, each such instrument shall be executed by both the lessor and the lessee:]

¹ Subs by the Transfer of Property (Amendment) Act, 1929 (20 of 1929), s 54, for "tendered or delivered either personally to the party who is intended to be bound by it"

² As to limitation to the territorial operation of s 107, see s 1, *supra* S 107 extends to every cantonment in the Provinces—see s 287 of the Cantonments Act, 1924 (2 of 1924)

³ Subs by the Transfer of Property (Amendment) Act, 1904 (6 of 1904), s 5, for the original paragraph

⁴ Ins by Act 20 of 1929, s 55

(Chapter V.—Of Leases of Immoveable Property.)

¹[Provided that the ²[Provincial Government] may, * * * * * from time to time, by notification in the ⁴[Official Gazette], direct that leases of immoveable property, other than leases from year to year, or for any term exceeding one year, or reserving a yearly rent, or any class of such leases, may be made by unregistered instrument or by oral agreement without delivery of possession]

108. In the absence of a contract or local usage to the contrary, the lessor and the lessee of immoveable property, as against one another, respectively, possess the rights and are subject to the liabilities mentioned in the rules next following, or such of them as are applicable to the property leased.—

Rights and
liabilities of
lessor and
lessee

(A) *Rights and Liabilities of the Lessor*

- (a) The lessor is bound to disclose to the lessee any material defect in the property, with reference to its intended use, of which the former is and the latter is not aware, and which the latter could not with ordinary care discover
- (b) the lessor is bound on the lessee's request to put him in possession of the property:
- (c) the lessor shall be deemed to contract with the lessee that, if the latter pays the rent reserved by the lease and performs the contracts binding on the lessee, he may hold the property during the time limited by the lease without interruption

The benefit of such contract shall be annexed to and go with the lessee's interest as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

(B) *Rights and Liabilities of the Lessee*

- (d) If during the continuance of the lease any accession is made to the property, such accession (subject to the law relating to alluvion for the time being in force) shall be deemed to be comprised in the lease:
- (e) if by fire, tempest or flood, or violence of an army or of a mob or other irresistible force, any material part of the property be wholly destroyed or rendered substantially and permanently unfit for the purposes for which it was let, the lease shall, at the option of the lessee, be void

¹ Ins by the Transfer of Property (Amendment) Act, 1904 (6 of 1904), s 5.

² Subs by the A O 1937 for "L G"

³ The words "with the previous sanction of the G G in C" rep by the A O 1937.

⁴ Subs by the A O 1937 for "local official Gazette".

(Chapter V —Of Leases of Immoveable Property)

Provided that, if the injury be occasioned by the wrongful act or default of the lessee, he shall not be entitled to avail himself of the benefit of this provision

- (f) if the lessor neglects to make, within a reasonable time after notice, any repairs which he is bound to make to the property, the lessee may make the same himself, and deduct the expense of such repairs with interest from the rent, or otherwise recover it from the lessor.
- (g) if the lessor neglects to make any payment which he is bound to make, and which, if not made by him, is recoverable from the lessee or against the property, the lessee may make such payment himself, and deduct it with interest from the rent, or otherwise recover it from the lessor
- (h) the lessee may ¹[even after the determination of the lease] remove, at any time ²[whilst he is in possession of the property leased but not afterwards] all things which he has attached to the earth . provided he leaves the property in the state in which he received it.
- (i) when a lease of uncertain duration determines by any means except the fault of the lessee, he or his legal representative is entitled to all the crops planted or sown by the lessee and growing upon the property when the lease determines, and to free ingress and egress to gather and carry them
- (j) the lessee may transfer absolutely or by way of mortgage or sub-lease the whole or any part of his interest in the property, and any transferee of such interest or part may again transfer it The lessee shall not, by reason only of such transfer, cease to be subject to any of the liabilities attaching to the lease:
 nothing in this clause shall be deemed to authorize a tenant having an un-transferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate under the management of a Court of Wards, to assign his interest as such tenant, farmer or lessee.
- (k) the lessee is bound to disclose to the lessor any fact as to the nature or extent of the interest which the lessee is about to take, of which the lessee is, and the lessor is not, aware, and which materially increases the value of such interest.
- (l) the lessee is bound to pay or tender, at the proper time and place, the premium or rent to the lessor or his agent in this behalf

¹ Ins by the Transfer of Property (Amendment) Act, 1929 (20 of 1929), s 56

² Subs by s 56, *ibid*, for " during the continuance of the lease "

(Chapter V.—Of Leases of Immoveable Property.)

(m) the lessee is bound to keep, and on the termination of the lease to restore, the property in as good condition as it was in at the time when he was put in possession, subject only to the changes caused by reasonable wear and tear or irresistible force, and to allow the lessor and his agents, at all reasonable times during the term, to enter upon the property and inspect the condition thereof and give or leave notice of any defect in such condition, and, when such defect has been caused by any act or default on the part of the lessee, his servants or agents, he is bound to make it good within three months after such notice has been given or left

(n) if the lessee becomes aware of any proceeding to recover the property or any part thereof, or of any encroachment made upon, or any interference with, the lessor's rights concerning such property, he is bound to give, with reasonable diligence, notice thereof to the lessor

(o) the lessee may use the property and its products (if any) as a person of ordinary prudence would use them if they were his own, but he must not use, or permit another to use, the property for a purpose other than that for which it was leased, or fell ¹[or sell] timber, pull down or damage buildings ¹[belonging to the lessor, or] work mines or quarries not open when the lease was granted, or commit any other act which is destructive or permanently injurious thereto,

(p) he must not, without the lessor's consent, erect on the property any permanent structure, except for agricultural purposes

(q) on the determination of the lease, the lessee is bound to put the lessor into possession of the property

109. If the lessor transfers the property leased, or any part thereof, or any part of his interest therein, the transferee, in the absence of a contract to the contrary, shall possess all the rights, and, if the lessee so elects, be subject to all the liabilities of the lessor as to the property or part transferred so long as he is the owner of it, but the lessor shall not, by reason only of such transfer, cease to be subject to any of the liabilities imposed upon him by the lease, unless the lessee elects to treat the transferee as the person liable to him

Rights of
lessor's
transferee

Provided that the transferee is not entitled to arrears of rent due before the transfer, and that, if the lessee, not having reason to believe that such transfer has been made, pays rent to the lessor, the lessee shall not be liable to pay such rent over again to the transferee

¹ Ins by the Transfer of Property (Amendment) Act, 1929 (20 of 1929), s 56

(Chapter V —Of Leases of Immoveable Property)

The lessor, the transferee and the lessee may determine what proportion of the premium or rent reserved by the lease is payable in respect of the part so transferred, and, in case they disagree, such determination may be made by any Court having jurisdiction to entertain a suit for the possession of the property leased

Exclusion of
day on which
term com-
mences

110 Where the time limited by a lease of immoveable property is expressed as commencing from a particular day, in computing that time such day shall be excluded. Where no day of commencement is named, the time so limited begins from the making of the lease

Duration of
lease for
year.

Where the time so limited is a year or a number of years, in the absence of an express agreement to the contrary, the lease shall last during the whole anniversary of the day from which such time commences

Option to
terminate
lease

Where the time so limited is expressed to be terminable before its expiration, and the lease omits to mention at whose option it is so terminable, the lessee, and not the lessor, shall have such option

Determina-
tion of
lease

111. A lease of immoveable property determines—

- (a) by efflux of the time limited thereby
- (b) where such time is limited conditionally on the happening of some event—by the happening of such event
- (c) where the interest of the lessor in the property terminates on, or his power to dispose of the same extends only to, the happening of any event—by the happening of such event.
- (d) in case the interests of the lessee and the lessor in the whole of the property become vested at the same time in one person in the same right .
- (e) by express surrender, that is to say, in case the lessee yields up his interest under the lease to the lessor, by mutual agreement between them
- (f) by implied surrender
- (g) by forfeiture, that is to say, (1) in case the lessee breaks an express condition which provides that on breach thereof the lessor may re-enter ¹* * * *, or (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself, ²[or (3) the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event]; and in ³[any of these cases] the lessor or his transferee ⁴[gives notice in writing to the lessee of] his intention to determine the lease

¹ The words "or the lease shall become void" rep by the Transfer of Property (Amendment) Act, 1929 (20 of 1929), s 57

² Ins by s 57, *ibid*

³ Subs by s 57, *ibid*, for "either case"

⁴ Subs by s 57, *ibid*, for "does some act showing".

(Chapter V —Of Leases of Immoveable Property)

- (h) on the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other

Illustration to clause (f)

A lessee accepts from his lessor a new lease of the property leased, to take effect during the continuance of the existing lease. This is an implied surrender of the former lease, and such lease determines thereupon

112. A forfeiture under section III, clause (g), is waived by acceptance of rent which has become due since the forfeiture, or by distress for such rent, or by any other act on the part of the lessor showing an intention to treat the lease as subsisting: Waiver of forfeiture

Provided that the lessor is aware that the forfeiture has been incurred

Provided also that, where rent is accepted after the institution of a suit to eject the lessee on the ground of forfeiture, such acceptance is not a waiver.

113. A notice given under section III, clause (h), is waived, with the express or implied consent of the person to whom it is given, by any act on the part of the person giving it showing an intention to treat the lease as subsisting Waiver of notice to quit

Illustrations

(a) A, the lessor, gives B, the lessee, notice to quit the property leased. The notice expires. B tenders, and A accepts, rent which has become due in respect of the property since the expiration of the notice. The notice is waived.

(b) A, the lessor, gives B, the lessee, notice to quit the property leased. The notice expires, and B remains in possession. A gives to B as lessee a second notice to quit. The first notice is waived.

114. Where a lease of immoveable property has determined by forfeiture for non-payment of rent, and the lessor sues to eject the lessee, if, at the hearing of the suit, the lessee pays or tenders to the lessor the rent in arrear, together with interest thereon and his full costs of the suit, or gives such security as the Court thinks sufficient for making such payment within fifteen days, the Court may, in lieu of making a decree for ejectment pass an order relieving the lessee against the forfeiture, and thereupon the lessee shall hold the property leased as if the forfeiture had not occurred Relief against forfeiture for non-payment of rent

¹[114A. Where a lease of immoveable property has determined by forfeiture for a breach of an express condition which provides that on breach thereof the lessor may re-enter, no suit for ejectment shall lie unless and until the lessor has served on the lessee a notice in writing— Relief against forfeiture in certain other cases

(a) specifying the particular breach complained of, and

(b) if the breach is capable of remedy, requiring the lessee to remedy the breach,

¹ Ins. by the Transfer of Property (Amendment) Act, 1929 (20 of 1929), s 58

(Chapter V—Of Leases of Immoveable Property)

and the lessee fails, within a reasonable time from the date of the service of the notice, to remedy the breach, if it is capable of remedy.

Nothing in this section shall apply to an express condition against the assigning, under-letting, parting with the possession, or disposing, of the property leased, or to an express condition relating to forfeiture in case of non-payment of rent]

Effect of
surrender and
forfeiture on
under-leases

115. The surrender, express or implied, of a lease of immoveable property does not prejudice an under-lease of the property or any part thereof previously granted by the lessee, on terms and conditions substantially the same (except as regards the amount of rent) as those of the original lease, but, unless the surrender is made for the purpose of obtaining a new lease, the rent payable by, and the contracts binding on, the under-lessee shall be respectively payable to and enforceable by the lessor

The forfeiture of such a lease annuls all such under-leases except where such forfeiture has been procured by the lessor in fraud of the under-lessees, or relief against the forfeiture is granted under section 114

Effect of
holding
over

116 If a lessee or under-lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or under-lessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased, as specified in section 106

Illustrations

(a) A lets a house to B for five years B underlets the house to C at a monthly rent of Rs 100 The five years expire, but C continues in possession of the house and pays the rent to A C's lease is renewed from month to month

(b) A lets a farm to B for the life of C C dies, but B continues in possession with A's assent B's lease is renewed from year to year

Exemption
of leases for
agricultural
purposes

117. None of the provisions of this Chapter apply to leases for agricultural purposes, except in so far as the ¹[Provincial Government] ²* * * may, by notification published in the ³[Official Gazette], declare all or any of such provisions to be so applicable ⁴[in the case of all or any of such leases], together with, or subject to, those of the local law, if any, for the time being in force

Such notification shall not take effect until the expiry of six months from the date of its publication

¹ Subs by the A O 1937 for "L G"

² The words "with the previous sanction of the G G in C" rep by the Devolution Act, 1920 (38 of 1920), s 2 and Sch I

³ Subs by the A O 1937 for "local official Gazette"

⁴ Ins by the Transfer of Property (Amendment) Act, 1904 (6 of 1904), s 6

(Chapter VI—Of Exchanges Chapter VII—Of Gifts)

CHAPTER VI

OF EXCHANGES

118. When two persons mutually transfer the ownership of one thing for the ownership of another, neither thing or both things being money only, the transaction is called an "exchange" "Exchange" defined

A transfer of property in completion of an exchange can be made only in manner provided for the transfer of such property by sale

¹[119. If any party to an exchange or any person claiming through or under such party is by reason of any defect in the title of the other party deprived of the thing or any part of the thing received by him in exchange, then, unless a contrary intention appears from the terms of the exchange, such other party is liable to him or any person claiming through or under him for loss caused thereby, or at the option of the person so deprived, for the return of the thing transferred, if still in the possession of such other party or his legal representative or a transferee from him without consideration] Right of party deprived of thing received in exchange

120. Save as otherwise provided in this Chapter, each party has the rights and is subject to the liabilities of a seller as to that which he gives, and has the rights and is subject to the liabilities of a buyer as to that which he takes Rights and liabilities of parties

121 On an exchange of money, each party thereby warrants the genuineness of the money given by him Exchange of money

CHAPTER VII

OF GIFTS

122. "Gift" is the transfer of certain existing moveable or immovable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee "Gift" defined

Such acceptance must be made during the lifetime of the donor and while he is still capable of giving Acceptance when to be made

If the donee dies before acceptance, the gift is void

²123. For the purpose of making a gift of immovable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses. Transfer how effected

¹ Subs by the Transfer of Property (Amendment) Act, 1929 (20 of 1929), s 59, for the original section

² As to limitation to the territorial operation of s 123, see s 1, *supra* S 123 extends to every cantonment in the Provinces—see s 287 of the Cantonments Act, 1924 (2 of 1924)

(Chapter VII —Of Gifts)

For the purpose of making a gift of moveable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery

Such delivery may be made in the same way as goods sold may be delivered

Gift of existing and future property

Gift to several of whom one does not accept

When gift may be suspended or revoked

• 124. A gift comprising both existing and future property is void as to the latter.

125. A gift of a thing to two or more donees, of whom one does not accept it, is void as to the interest which he would have taken had he accepted

126. The donor and donee may agree that on the happening of any specified event which does not depend on the will of the donor a gift shall be suspended or revoked, but a gift which the parties agree shall be revocable wholly or in part, at the mere will of the donor, is void wholly or in part, as the case may be

A gift may also be revoked in any of the cases (save want or failure of consideration) in which, if it were a contract, it might be rescinded

Save as aforesaid, a gift cannot be revoked

Nothing contained in this section shall be deemed to affect the rights of transferees for consideration without notice

* Illustrations

(a) A gives a field to B, reserving to himself, with B's assent, the right to take back the field in case B and his descendants die before A. B dies without descendants in A's lifetime. A may take back the field.

(b) A gives a lakh of rupees to B, reserving to himself, with B's assent, the right to take back at pleasure Rs 10,000 out of the lakh. The gift holds good as to Rs 90,000, but is void as to Rs 10,000, which continue to belong to A.

Onerous gift

127. Where a gift is in the form of a single transfer to the same person of several things of which one is, and the others are not, burdened by an obligation, the donee can take nothing by the gift unless he accepts it fully.

Where a gift is in the form of two or more separate and independent transfers to the same person of several things, the donee is at liberty to accept one of them and refuse the others, although the former may be beneficial and the latter onerous

Onerous gift to disqualified person

A donee not competent to contract and accepting property burdened by any obligation is not bound by his acceptance. But if, after becoming competent to contract and being aware of the obligation, he retains the property given, he becomes so bound

Illustrations

(a) A has shares in X, a prosperous joint stock company, and also shares in Y, a joint stock company, in difficulties. Heavy calls are expected in respect of the shares in Y. A gives B all his shares in joint stock companies. B refuses to accept the shares in Y. He cannot take the shares in X.

(Chapter VII —Of Gifts Chapter VIII —Of Transfers of Actionable Claims)

(b) A having a lease for a term of years of a house at a rent which he and his representatives are bound to pay during the term, and which is more than the house can be let for, gives to B the lease, and also, as a separate and independent transaction, a sum of money B refuses to accept the lease He does not by this refusal forfeit the money

128. Subject to the provisions of section 127, where a gift consists of the donor's whole property, the donee is personally liable for all the debts due by ¹[and liabilities of] the donor at the time of the gift to the extent of the property comprised therein

129. Nothing in this Chapter relates to gifts of moveable property made in contemplation of death, or shall be deemed to affect any rule of Muhammadan law ²* * * *

Universal donee

Saving of donations mortis causa and Muhammadan law

³[CHAPTER VIII

OF TRANSFERS OF ACTIONABLE CLAIMS

130. (1) The transfer of an actionable claim ⁴[whether with or without consideration] shall be effected only by the execution of an instrument in writing signed by the transferor or his duly authorized agent, ⁵* * * * shall be complete and effectual upon the execution of such instrument, and thereupon all the rights and remedies of the transferor, whether by way of damages or otherwise, shall vest in the transferee, whether such notice of the transfer as is hereinafter provided be given or not

Transfer of actionable claim

Provided that every dealing with the debt or other actionable claim by the debtor or other person from or against whom the transferor would, but for such instrument of transfer as aforesaid, have been entitled to recover or enforce such debt or other actionable claim, shall (save where the debtor or other person is a party to the transfer or has received express notice thereof as hereinafter provided) be valid as against such transfer

(2) The transferee of an actionable claim may, upon the execution of such instrument of transfer as aforesaid, sue or institute proceedings for the same in his own name without obtaining the transferor's consent to such suit or proceedings and without making him a party thereto

Exception —Nothing in this section applies to the transfer of a marine or fire policy of insurance ⁶[or affects the provisions of section 38 of the Insurance Act, 1938]

¹ Ins by the Transfer of Property (Amendment) Act, 1929 (20 of 1929), s 60

² The words "or, save as provided by section 123, any rule of Hindu or Buddhist law" rep by s 61, *ibid*

³ Subs. by the Transfer of Property Act, 1900 (2 of 1900), s 4, for the original Chapter VIII

⁴ Ins by Act 20 of 1929, s 62

⁵ The words "and notwithstanding anything contained in s 123" rep by s 62, *ibid*

⁶ Ins by the Insurance Act, 1938 (4 of 1938), s 121 (with effect from 1-7-1939)

(Chapter VIII—Of Transfers of Actionable Claims)

Illustrations

(i) A owes money to B, who transfers the debt to C. B then demands the debt from A, who, not having received notice of the transfer, as prescribed in section 131, pays B. The payment is valid, and C cannot sue A for the debt.

(ii) A effects a policy on his own life with an Insurance Company, and assigns it to a Bank for securing the payment of an existing or future debt. If A dies, the Bank is entitled to receive the amount of the policy and to sue on it without the concurrence of A's executor, subject to the proviso in sub-section (1) of section 130 and to the provisions of section 132.

Transfer of
policy of
marine
insurance

¹[130A. (1) A policy of marine insurance may be transferred by assignment unless it contains terms expressly prohibiting assignment, and may be assigned either before or after loss.

(2) A policy of marine insurance may be assigned by endorsement thereon or in any other customary manner.

(3) Where the insured person has parted with or lost his interest in the subject-matter insured, and has not, before or at the time of so doing, expressly or impliedly agreed to assign the policy, any subsequent assignment of the policy is inoperative.

Provided that nothing in this sub-section affects the assignment of a policy after loss.

(4) Nothing in clause (e) of section 6 shall affect the provisions of this section.]

Notice to be
in writing,
signed

131. Every notice of transfer of an actionable claim shall be in writing, signed by the transferor or his agent duly authorized in this behalf, or, in case the transferor refuses to sign, by the transferee or his agent, and shall state the name and address of the transferee.

Liability of
transferee of
actionable
claim

132. The transferee of an actionable claim shall take it subject to all the liabilities and equities to which the transferor was subject in respect thereof at the date of the transfer.

Illustrations

(i) A transfers to C a debt due to him by B, A being then indebted to B. C sues B for the debt due by B to A. In such suit B is entitled to set off the debt due by A to him, although C was unaware of it at the date of such transfer.

(ii) A executed a bond in favour of B under circumstances entitling the former to have it delivered up and cancelled. B assigns the bond to C for value and without notice of such circumstances. C cannot enforce the bond against A.

Warranty of
solvency of
debtor

133. Where the transferor of a debt warrants the solvency of the debtor, the warranty, in the absence of a contract to the contrary, applies only to his solvency at the time of the transfer, and is limited, where the transfer is made for consideration, to the amount or value of such consideration.

Mortgaged
debt

134. Where a debt is transferred for the purpose of securing an existing or future debt, the debt so transferred, if received by the transferor or recovered by the transferee, is applicable, first, in payment of the costs of such recovery; secondly, in or towards satisfaction of the amount for the time being secured by the transfer; and the residue, if any, belongs to the transferor or other person entitled to receive the same.

¹ S. 130A ins. by the Transfer of Property (Amendment) Act, 1944 (6 of 1944), s. 2.

(Chapter VIII—Of Transfers of Actionable Claims)

¹[135 Every assignee, by endorsement or other writing, of a policy of insurance against fire, in whom the property in the subject insured shall be absolutely vested at the date of the assignment, shall have transferred and vested in him all rights of suit as if the contract contained in the policy had been made with himself]

Assignment of rights under policy of insurance against fire

²[135A. (1) Where a policy of marine insurance has been assigned so as to pass the beneficial interest therein, the assignee of the policy is entitled to sue thereon in his own name, and the defendant is entitled to make any defence arising out of the contract which he would have been entitled to make if the action had been brought in the name of the person by or on behalf of whom the policy was effected

Assignment of rights under policy of marine insurance

(2) Where the insurer pays for a total loss, either of the whole, or, in the case of goods, of any apportionable part, of the subject-matter insured, he thereupon becomes entitled to take over the interest of the insured person in whatever may remain of the subject-matter so paid for, and he is thereby subrogated to all the rights and remedies of the insured person in and in respect of that subject-matter as from the time of the casualty causing the loss

(3) Where the insurer pays for a partial loss, he acquires no title to the subject-matter insured, or such part of it as may remain, but he is thereupon subrogated to all rights and remedies of the insured person as from the time of the casualty causing the loss, in so far as the insured person has been indemnified by such payment for the loss

(4) Nothing in clause (e) of section 6 shall affect the provisions of this section]

136. No Judge, legal practitioner or officer connected with any Court of Justice shall buy or traffic in, or stipulate for, or agree to receive any share of, or interest in, any actionable claim, and no Court of Justice shall enforce, at his instance, or at the instance of any person claiming by or through him, any actionable claims, so dealt with by him as aforesaid

Incapacity of officers connected with Courts of Justice

137. Nothing in the foregoing sections of this Chapter applies to stocks, shares or debentures, or to instruments which are for the time being, by law or custom, negotiable, or to any mercantile document of title to goods

Saving of negotiable instruments, etc

Explanation—The expression “mercantile document of title to goods” includes a bill of lading, dock-warrant, warehousekeeper’s certificate, railway receipt, warrant or order for the delivery of goods, and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorize, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented]

¹ Subs. by s 3 of the Transfer of Property (Amendment) Act, 1944 (6 of 1944), for the original section

² S 135A ins by s 4, *ibid*

(The Schedule)

THE SCHEDULE

Year and chapter	Subject	Extent of repeal
(a) STATUTES		
27 Hen VIII, c 10	Uses	The whole
13 Eliz, c 5	Fraudulent conveyances	The whole
27 Eliz, c 4	Fraudulent conveyances	The whole
4 Wm and Mary, c 16	Clandestine mortgages	The whole
(b) ACTS OF THE GOVERNOR GENERAL IN COUNCIL		
IX of 1842	Lease and release	The whole
XXXI of 1854	Modes of conveying land	Section 17
XI of 1855	Mesne profits and improvements	Section 1, in the title, the words "to mesne profits and," and in the preamble "to limit the liability for mesne profits and".
XXVII of 1866	Indian Trustee Act	Section 31
IV of 1872	Punjab Laws Act	So far as it relates to Bengal Regulations I of 1798 and XVII of 1806
XX of 1875	Central Provinces Laws Act	So far as it relates to Bengal Regulations I of 1798 and XVII of 1806
XVIII of 1876	Oudh Laws Act	So far as it relates to Bengal Regulation XVII of 1806
I of 1877	Specific Relief	In sections 35 and 36, the words "in writing"
(c) REGULATIONS		
Bengal Regulation I of 1798	Conditional sales	The whole Regulation
Bengal Regulation XVII of 1806	Redemption	The whole Regulation.
Bombay Regulation V of 1827	Acknowledgment of Debts, Interest, Mortgagees in possession	Section 15

THE INDIAN EASEMENTS ACT, 1882.

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ACT NO V OF 1882.¹

[17th February, 1882]

An Act to define and amend the Law relating to Easements
and Licenses

WHEREAS it is expedient to define and amend the law relating to easements and licenses , It is hereby enacted as follows — Preamble

PRELIMINARY

1. This Act may be called the Indian Easements Act 1882

Short title

¹ For Statement of Objects and Reasons, see Gazette of India, 1880, Pt V, p 494, for Report of the Select Committee, see *ibid*, Pt V, p 1021, and for Proceedings in Council, see *ibid*, 1881, Supplement, pp 687 and 766, and *ibid*, 1882, Supplement, p 172

(Preliminary. Chapter I—Of Easements generally)

Local extent	It extends ¹ to the territories respectively administered by the Governor of Madras in Council and the Chief Commissioners of the Central Provinces and Coorg ,
Commence- ment	and it shall come into force on the first day of July, 1882.
Savings.	2 Nothing herein contained shall be deemed to affect any law not hereby expressly repealed , or to derogate from—
	(a) any right of the ² [Crown] to regulate the collection, retention and distribution of the water of rivers and streams flowing in natural channels, and of natural lakes and ponds, or of the water flowing, collected, retained or distributed in or by any channel or other work constructed at the public expense for irrigation ,
	(b) any customary or other right (not being a license) in or over immoveable property which the ² [Crown], the public or any person may possess irrespective of other immoveable property , or
	(c) any right acquired, or arising out of a relation created, before this Act comes into force
Construction of certain references to Act XV of 1877 and Act IX of 1871	³ [3. All references in any Act or Regulation to sections 26 and 27 of the Indian Limitation Act, 1877 ⁴ , or to sections 27 and 28 of Act No IX XV of 18 of 1871 ⁵ shall, in the territories to which this Act extends, be read as made to sections 15 and 16 of this Act]

CHAPTER I

OF EASEMENTS GENERALLY

"Easement" defined

4. An easement is a right which the owner or occupier of certain land possesses, as such, for the beneficial enjoyment of that land, to do and continue to do something, or to prevent and continue to prevent something being done, in or upon, or in respect of, certain other land not his own.

Dominant and servient heritages and owners.

The land for the beneficial enjoyment of which the right exists is called the dominant heritage, and the owner or occupier thereof the dominant owner, the land on which the liability is imposed is called the servient heritage, and the owner or occupier thereof the servient owner

Explanation—In the first and second clauses of this section, the expression "land" includes also things permanently attached to the earth the expression "beneficial enjoyment" includes also possible

¹ The Act was extended to Bombay and the U P by Act 8 of 1891 and continues in force, with modifications, in the territory transferred to Delhi Province, see the Delhi Laws Act, 1915 (7 of 1915), s 3 and Sch III

² Subs by the A O 1937 for "Govt."

³ Subs by the Repealing and Amending Act, 1974 (10 of 1974), s 2 and Sch I, for the original section.

⁴ Rep by the Indian Limitation Act, 1908 (9 of 1908).

⁵ Rep by Act 15 of 1877.

(Chapter I —Of Easements generally)

convenience, remote advantage, and even a mere amenity, and the expression "to do something" includes removal and appropriation by the dominant owner, for the beneficial enjoyment of the dominant heritage, of any part of the soil of the servient heritage or anything growing or subsisting thereon

Illustrations

(a) A, as the owner of a certain house, has a right of way thither over his neighbour B's land for purposes connected with the beneficial enjoyment of the house This is an easement

(b) A, as the owner of a certain house, has the right to go on his neighbour B's land, and to take water for the purposes of his household out of a spring therein This is an easement

(c) A, as the owner of a certain house, has the right to conduct water from B's stream to supply the fountains in the garden attached to the house This is an easement

(d) A, as the owner of a certain house and farm, has the right to graze a certain number of his own cattle on B's field, or to take, for the purpose of being used in the house, by himself, his family, guests, lodgers and servants, water or fish out of C's tank, or timber out of D's wood, or to use, for the purpose of manuring his land, the leaves which have fallen from the trees on E's land These are easements

(e) A dedicates to the public the right to occupy the surface of certain land for the purpose of passing and re-passing This right is not an easement

(f) A is bound to cleanse a watercourse running through his land and keep it free from obstruction for the benefit of B, a lower riparian owner This is not an easement

5. Easements are either continuous or discontinuous, apparent or non-apparent.

A continuous easement is one whose enjoyment is, or may be, continual without the act of man

A discontinuous easement is one that needs the act of man for its enjoyment

An apparent easement is one the existence of which is shown by some permanent sign which, upon careful inspection by a competent person, would be visible to him

A non-apparent easement is one that has no such sign

Illustrations

(a) A right annexed to B's house to receive light by the windows without obstruction by his neighbour A This is a continuous easement

(b) A right of way annexed to A's house over B's land This is a discontinuous easement

(c) Rights annexed to A's land to lead water thither across B's land by an aqueduct and to draw off water thence by a drain The drain would be discovered upon careful inspection by a person conversant with such matters These are apparent easements

(d) A right annexed to A's house to prevent B from building on his own land This is a non-apparent easement

6. An easement may be permanent, or for a term of years or other limited period, or subject to periodical interruption, or exercisable only at a certain place, or at certain times, or between certain hours, or for a particular purpose, or on condition that it shall commence or become void

Continuous and discontinuous, apparent and non-apparent, easements

Easement for limited time or on condition

(Chapter I—Of Easements generally)

or voidable on the happening of a specified event or the performance or non-performance of a specified act

Easements
restrictive
of certain
rights
Exclusive
right to
enjoy

7. Easements are restrictions of one or other of the following rights (namely) —

(a) The exclusive right of every owner of immoveable property (subject to any law for the time being in force) to enjoy and dispose of the same and all products thereof and accessions thereto.

Rights to
advantages
arising from
situation

(b) The right of every owner of immoveable property (subject to any law for the time being in force) to enjoy without disturbance by another the natural advantages arising from its situation

Illustrations of the rights above referred to

(a) The exclusive right of every owner of land in a town to build on such land, subject to any municipal law for the time being in force

(b) The right of every owner of land that the air passing thereto shall not be unreasonably polluted by other persons

(c) The right of every owner of a house that his physical comfort shall not be interfered with materially and unreasonably by noise or vibration caused by any other person

(d) The right of every owner of land to so much light and air as pass vertically thereto

(e) The right of every owner of land that such land, in its natural condition, shall have the support naturally rendered by the subjacent and adjacent soil of another person

Explanation —Land is in its natural condition when it is not excavated and not subjected to artificial pressure, and the "subjacent and adjacent soil" mentioned in this illustration means such soil only as in its natural condition would support the dominant heritage in its natural condition

(f) The right of every owner of land that, within his own limits, the water which naturally passes or percolates by, over or through his land shall not, before so passing or percolating, be unreasonably polluted by other persons

(g) The right of every owner of land to collect and dispose within his own limits of all water under the land which does not pass in a defined channel and all water on its surface which does not pass in a defined channel

(h) The right of every owner of land that the water of every natural stream which passes by, through or over his land in a defined natural channel shall be allowed by other persons to flow within such owner's limits without interruption and without material alteration in quantity, direction, force or temperature, the right of every owner of land abutting on a natural lake or pond into or out of which a natural stream flows, that the water of such lake or pond shall be allowed by other persons to remain within such owner's limits without material alteration in quantity or temperature

(i) The right of every owner of upper land that water naturally rising in, or falling, on such land, and not passing in defined channels, shall be allowed by the owner of adjacent lower land to run naturally thereto

(j) The right of every owner of land abutting on a natural stream, lake or pond to use and consume its water for drinking, household purposes and watering his cattle and sheep, and the right of every such owner to use and consume the water for irrigating such land and for the purposes of any manufactory situate thereon Provided that he does not thereby cause material injury to other like owners

Explanation —A natural stream is a stream, whether permanent or intermittent, tidal or tideless, on the surface of land or underground, which flows by the operation of nature only and in a natural and known course

(Chapter II —The Imposition, Acquisition and Transfer of Easements)

CHAPTER II

THE IMPOSITION, ACQUISITION AND TRANSFER OF EASEMENTS

8. An easement may be imposed by any one in the circumstances, and to the extent, in and to which he may transfer his interest in the heritage on which the liability is to be imposed

Who may
impose ease-
ments

Illustrations

(a) A is tenant of B's land under a lease for an unexpired term of twenty years, and has power to transfer his interest under the lease. A may impose an easement on the land to continue during the time that the lease exists or for any shorter period.

(b) A is tenant for his life of certain land with remainder to B absolutely. A cannot, unless with B's consent, impose an easement thereon which will continue after the determination of his life-interest.

(c) A, B and C are co-owners of certain land. A cannot, without the consent of B and C, impose an easement on the land or on any part thereof.

(d) A and B are lessees of the same lessor, A of a field X for a term of five years, and B of a field Y for a term of ten years. A's interest under his lease is transferable, B's is not. A may impose on X, in favour of B, a right of way terminable with A's lease.

9. Subject to the provisions of section 8, a servient owner may impose on the servient heritage any easement that does not lessen the utility of the existing easement. But he cannot, without the consent of the dominant owner, impose an easement on the servient heritage which would lessen such utility.

Servient
owners

Illustrations

(a) A has, in respect of his mill, a right to the uninterrupted flow thereto from sunrise to noon of the water of B's stream. B may grant to C the right to divert the water of the stream from noon to sunset. Provided that A's supply is not thereby diminished.

(b) A has, in respect of his house, a right of way over B's land. B may grant to C, as the owner of a neighbouring farm, the right to feed his cattle on the grass growing on the way. Provided that A's right of way is not thereby obstructed.

10. Subject to the provisions of section 8, a lessor may impose, on the property leased, any easement that does not derogate from the rights of the lessee as such, and a mortgagor may impose, on the property mortgaged, any easement that does not render the security insufficient. But a lessor or mortgagor cannot, without the consent of the lessee or mortgagee, impose any other easement on such property, unless it be to take effect on the termination of the lease or the redemption of the mortgage.

Lessor and
mortgagor

Explanation —A security is insufficient within the meaning of this section unless the value of the mortgaged property exceeds by one-third, or, if consisting of buildings, exceeds by one-half, the amount for the time being due on the mortgage.

11. No lessee or other person having a derivative interest may impose on the property held by him as such an easement to take effect after the

Lessee

(Chapter II.—The Imposition, Acquisition and Transfer of Easements)

expiration of his own interest, or in derogation of the right of the lessor or the superior proprietor.

Who may
acquire ease-
ments.

12. An easement may be acquired by the owner of the immoveable property for the beneficial enjoyment of which the right is created, or on his behalf, by any person in possession of the same.

One of two or more co-owners of immoveable property may, as such, with or without the consent of the other or others, acquire an easement for the beneficial enjoyment of such property.

No lessee of immoveable property can acquire, for the beneficial enjoyment of other immoveable property of his own, an easement in or over the property comprised in his lease

Easements of
necessity
and *quasi*
easements

13. Where one person transfers or bequeaths immoveable property to another,—

- (a) if an easement in other immoveable property of the transferor or testator is necessary for enjoying the subject of the transfer or bequest, the transferee or legatee shall be entitled to such easement, or
- (b) if such an easement is apparent and continuous and necessary for enjoying the said subject as it was enjoyed when the transfer or bequest took effect, the transferee or legatee shall, unless a different intention is expressed or necessarily implied, be entitled to such easement,
- (c) if an easement in the subject of the transfer or bequest is necessary for enjoying other immoveable property of the transferor or testator, the transferor or the legal representative of the testator shall be entitled to such easement; or
- (d) if such an easement is apparent and continuous and necessary for enjoying the said property as it was enjoyed when the transfer or bequest took effect, the transferor, or the legal representative of the testator, shall, unless a different intention is expressed or necessarily implied, be entitled to such easement

Where a partition is made of the joint property of several persons,—

- (e) if an easement over the share of one of them is necessary for enjoying the share of another of them, the latter shall be entitled to such easement, or
- (f) if such an easement is apparent and continuous and necessary for enjoying the share of the latter as it was enjoyed when the partition took effect, he shall, unless a different intention is expressed or necessarily implied, be entitled to such easement

The easements mentioned in this section, clauses (a), (c) and (e), are called easements of necessity.

(Chapter II —The Imposition, Acquisition and Transfer of Easements.)

Where immoveable property passes by operation of law, the persons from and to whom it so passes are, for the purpose of this section, to be deemed, respectively, the transferor and transferee

Illustrations

(a) A sells B a field then used for agricultural purposes only. It is inaccessible except by passing over A's adjoining land or by trespassing on the land of a stranger. B is entitled to a right of way, for agricultural purposes only, over A's adjoining land to the field sold.

(b) A, the owner of two fields, sells one to B, and retains the other. The field retained was at the date of the sale, used for agricultural purposes only, and is inaccessible except by passing over the field sold to B. A is entitled to a right of way, for agricultural purposes only, over B's field to the field retained.

(c) A sells B a house with windows overlooking A's land, which A retains. The light which passes over A's land to the windows is necessary for enjoying the house as it was enjoyed when the sale took effect. B is entitled to the light, and A cannot afterwards obstruct it by building on his land.

(d) A sells B a house with windows overlooking A's land. The light passing over A's land to the windows is necessary for enjoying the house as it was enjoyed when the sale took effect. Afterwards A sells the land to C. Here C cannot obstruct the light by building on the land, for he takes it subject to the burdens to which it was subject in A's hands.

(e) A is the owner of a house and adjoining land. The house has windows overlooking the land. A simultaneously sells the house to B and the land to C. The light passing over the land is necessary for enjoying the house as it was enjoyed when the sale took effect. Here A impliedly grants B a right to the light, and C takes the land subject to the restriction that he may not build so as to obstruct such light.

(f) A is the owner of a house and adjoining land. The house has windows overlooking the land. A, retaining the house, sells the land to B, without expressly reserving any easement. The light passing over the land is necessary for enjoying the house as it was enjoyed when the sale took effect. A is entitled to the light, and B cannot build on the land so as to obstruct such light.

(g) A, the owner of a house, sells B a factory built on adjoining land. B is entitled, as against A, to pollute the air, when necessary, with smoke and vapours from the factory.

(h) A, the owner of two adjoining houses, Y and Z, sells Y to B, and retains Z. B is entitled to the benefit of all the gutters and drains common to the two houses and necessary for enjoying Y as it was enjoyed when the sale took effect, and A is entitled to the benefit of all the gutters and drains common to the two houses and necessary for enjoying Z as it was enjoyed when the sale took effect.

(i) A, the owner of two adjoining buildings, sells one to B, retaining the other. B is entitled to a right to lateral support from A's building, and A is entitled to a right to lateral support from B's building.

(j) A, the owner of two adjoining buildings, sells one to B and the other to C. C is entitled to lateral support from B's building, and B is entitled to lateral support from C's building.

(k) A grants lands to B for the purpose of building a house thereon. B is entitled to such amount of lateral and subjacent support from A's land as is necessary for the safety of the house.

(l) Under the Land Acquisition Act, 1870,¹ a Railway Company compulsorily acquires a portion of B's land for the purpose of making a siding. The Company is entitled to such amount of lateral support from B's adjoining land as is essential for the safety of the siding.

(m) Owing to the partition of joint property, A becomes the owner of an upper room in a building, and B becomes the owner of the portion of the building immediately beneath it. A is entitled to such amount of vertical support from B's portion as is essential for the safety of the upper room.

¹ See now the Land Acquisition Act, 1894 (1 of 1894).

(Chapter II —The Imposition, Acquisition and Transfer of Easements.)

(n) A lets a house and grounds to B for a particular business. B has no access to them other than by crossing A's land. B is entitled to a right of way over that land suitable to the business to be carried on by B in the house and grounds.

Direction
of way of
necessity

14. When ¹[a right] to a way of necessity is created under section 13, the transferor, the legal representative of the testator, or the owner of the share over which the right is exercised, as the case may be, is entitled to set out the way, but it must be reasonably convenient for the dominant owner.

When the person so entitled to set out the way refuses or neglects to do so, the dominant owner may set it out.

Acquisition
by prescrip-
tion

15. Where the access and use of light or air to and for any building have been peaceably enjoyed therewith, as an easement, without interruption, and for twenty years,

and where support from one person's land or things affixed thereto has been peaceably received by another person's land subjected to artificial pressure or by things affixed thereto, as an easement, without interruption, and for twenty years,

and where a right of way or any other easement has been peaceably and openly enjoyed by any person claiming title thereto, as an easement, and as of right, without interruption, and for twenty years,

the right to such access and use of light or air, support or other easement shall be absolute.

Each of the said periods of twenty years shall be taken to be a period ending within two years next before the institution of the suit wherein the claim to which such period relates is contested.

Explanation I —Nothing is an enjoyment within the meaning of this section when it has been had in pursuance of an agreement with the owner or occupier of the property over which the right is claimed, and it is apparent from the agreement that such right has not been granted as an easement, or, if granted as an easement, that it has been granted for a limited period, or subject to a condition on the fulfilment of which it is to cease.

Explanation II —Nothing is an interruption within the meaning of this section unless where there is an actual cessation of the enjoyment by reason of an obstruction by the act of some person other than the claimant, and unless such obstruction is submitted to or acquiesced in for one year after the claimant has notice thereof and of the person making or authorizing the same to be made.

Explanation III —Suspension of enjoyment in pursuance of a contract between the dominant and servient owners is not an interruption within the meaning of this section.

Explanation IV —In the case of an easement to pollute water, the said period of twenty years begins when the pollution first prejudices perceptibly the servient heritage.

¹ Subs. by the Amending Act, 1891 (12 of 1891), for "right".

(Chapter II—The Imposition, Acquisition and Transfer of Easements.)

When the property over which a right is claimed under this section belongs to ¹[the Crown], this section shall be read as if, for the words "twenty years" the words "sixty years" were substituted

Illustrations

(a) A suit is brought in 1883 for obstructing a right of way. The defendant admits the obstruction, but denies the right of way. The plaintiff proves that the right was peaceably and openly enjoyed by him, claiming title thereto as an easement and as of right, without interruption, from 1st January, 1862, to 1st January, 1882. The plaintiff is entitled to judgment.

(b) In a like suit the plaintiff shows that the right was peaceably and openly enjoyed by him for twenty years. The defendant proves that for a year of that time the plaintiff was entitled to possession of the servient heritage as lessee thereof and enjoyed the right as such lessee. The suit shall be dismissed, for the right of way has not been enjoyed "as an easement" for twenty years.

(c) In a like suit the plaintiff shows that the right was peaceably and openly enjoyed by him for twenty years. The defendant proves that the plaintiff on one occasion during the twenty years had admitted that the user was not of right and asked his leave to enjoy the right. The suit shall be dismissed, for the right of way has not been enjoyed "as of right" for twenty years.

16. Provided that, when any land upon, over or from which any easement has been enjoyed or derived has been held under or by virtue of any interest for life or any term of years exceeding three years from the granting thereof, the time of the enjoyment of such easement during the continuance of such interest or term shall be excluded in the computation of the said last-mentioned period of twenty years, in case the claim is, within three years next after the determination of such interest or term, resisted by the person entitled, on such determination, to the said land.

Exclusion in
favour of
reversioner
of servient
heritage

Illustration

A sues for a declaration that he is entitled to a right of way over B's land. A proves that he has enjoyed the right for twenty-five years, but B shows that during ten of these years C had a life-interest in the land, that on C's death B became entitled to the land, and that within two years after C's death he contested A's claim to the right. The suit must be dismissed, as A, with reference to the provisions of this section, has only proved enjoyment for fifteen years.

17. Easements acquired under section 15 are said to be acquired by prescription, and are called prescriptive rights.

Rights which
cannot be
acquired by
prescription

None of the following rights can be so acquired —

- (a) a right which would tend to the total destruction of the subject of the right, or the property on which, if the acquisition were made, liability would be imposed,
- (b) a right to the free passage of light or air to an open space of ground,
- (c) a right to surface-water not flowing in a stream and not permanently collected in a pool, tank or otherwise,
- (d) a right to underground water not passing in a defined channel

¹ Subs. by the A. O. 1937 for "Govt."

(Chapter II —The Imposition, Acquisition and Transfer of Easements
Chapter III —The Incidents of Easements)

Customary
easements

18. An easement may be acquired in virtue of a local custom. Such easements are called customary easements.

Illustrations

(a) By the custom of a certain village every cultivator of village land is entitled, as such, to graze his cattle on the common pasture. A, having become the tenant of a plot of uncultivated land in the village, breaks up and cultivates that plot. He thereby acquires an easement to graze his cattle in accordance with the custom.

(b) By the custom of a certain town no owner or occupier of a house can open a new window therein so as substantially to invade his neighbour's privacy. A builds a house in the town near B's house. A thereupon acquires an easement that B shall not open new windows in his house so as to command a view of the portions of A's house which are ordinarily excluded from observation, and B acquires a like easement with respect to A's house.

Transfer of
dominant
heritage passes
easement

19. Where the dominant heritage is transferred or devolves, by act of parties or by operation of law, the transfer or devolution shall, unless a contrary intention appears, be deemed to pass the easement to the person in whose favour the transfer or devolution takes place.

Illustration

A has certain land to which a right of way is annexed. A lets the land to B for twenty years. The right of way vests in B and his legal representative so long as the lease continues.

CHAPTER III

THE INCIDENTS OF EASEMENTS

Rules con-
trolled by
contract or
title.

20. The rules contained in this Chapter are controlled by any contract between the dominant and servient owners relating to the servient heritage, and by the provisions of the instrument or decree, if any, by which the easement referred to was imposed.

Incidents of
customary
easements

And when any incident of any customary easement is inconsistent with such rules, nothing in this Chapter shall affect such incident.

Bar to use
unconnected
with enjoy-
ment

21. An easement must not be used for any purpose not connected with the enjoyment of the dominant heritage.

Illustrations

(a) A, as owner of a farm Y, has a right of way over B's land to Y. Lying beyond Y, A has another farm Z, the beneficial enjoyment of which is not necessary for the beneficial enjoyment of Y. He must not use the easement for the purpose of passing to and from Z.

(b) A, as owner of a certain house, has a right of way to and from it. For the purpose of passing to and from the house, the right may be used, not only by A, but by the members of his family, his guests, lodgers, servants, workmen, visitors and customers, for this is a purpose connected with the enjoyment of the dominant heritage. So, if A lets the house, he may use the right of way for the purpose of collecting the rent and seeing that the house is kept in repair.

(Chapter III —The Incidents of Easements)

22. The dominant owner must exercise his right in the mode which is least onerous to the servient owner, and, when the exercise of an easement can without detriment to the dominant owner be confined to a determinate part of the servient heritage, such exercise shall, at the request of the servient owner, be so confined

Exercise of easement
Confinement of exercise of easement

Illustrations

(a) A has a right of way over B's field. A must enter the way at either end and not at any intermediate point

(b) A has a right annexed to his house to cut thatching-grass in B's swamp. A, when exercising his easement, must cut the grass so that the plants may not be destroyed

23. Subject to the provisions of section 22, the dominant owner may, from time to time, alter the mode and place of enjoying the easement, provided that he does not thereby impose any additional burden on the servient heritage

Right to alter mode of enjoyment

Exception —The dominant owner of a right of way cannot vary his line of passage at pleasure, even though he does not thereby impose any additional burden on the servient heritage

Illustrations

(a) A, the owner of a saw-mill, has a right to a flow of water sufficient to work the mill. He may convert the saw-mill into a corn-mill, provided that it can be worked by the same amount of water

(b) A has a right to discharge on B's land the rain-water from the eaves of A's house. This does not entitle A to advance his eaves if, by so doing, he imposes a greater burden on B's land

(c) A, as the owner of a paper-mill, acquires a right to pollute a stream by pouring in the refuse-liquor produced by making in the mill paper from rags. He may pollute the stream by pouring in similar liquor produced by making in the mill paper by a new process from bamboos, provided that he does not substantially increase the amount, or injuriously change the nature, of the pollution

(d) A, a riparian owner, acquires, as against the lower riparian owners, a prescriptive right to pollute a stream by throwing sawdust into it. This does not entitle A to pollute the stream by discharging into it poisonous liquor

24. The dominant owner is entitled,¹ as against the servient owner, to do all acts necessary to secure the full enjoyment of the easement, but such acts must be done at such time and in such manner as, without detriment to the dominant owner, to cause the servient owner as little inconvenience as possible, and the dominant owner must repair, as far as practicable, the damage (if any) caused by the act to the servient heritage

Right to do acts to secure enjoyment

Rights to do acts necessary to secure the full enjoyment of an easement are called accessory rights

Accessory rights

Illustrations

(a) A has an easement to lay pipes in B's land to convey water to A's cistern. A may enter and dig the land in order to mend the pipes, but he must restore the surface to its original state

¹ But see s 36, *infra*, as to abatement of obstruction of easement

(Chapter III —The Incidents of Easements)

(b) A has an easement of a drain through B's land. The sewer with which the drain communicates is altered. A may enter upon B's land and alter the drain, to adapt it to the new sewer, provided that he does not thereby impose any additional burden on B's land.

(c) A, as owner of a certain house, has a right of way over B's land. The way is out of repair, or a tree is blown down and falls across it. A may enter on B's land and repair the way or remove the tree from it.

(d) A, as owner of a certain field, has a right of way over B's land. B renders the way impassable. A may deviate from the way and pass over the adjoining land of B, provided that the deviation is reasonable.

(e) A, as owner of a certain house, has a right of way over B's field. A may remove rocks to make the way.

(f) A has an easement of support from B's wall. The wall gives way. A may enter upon B's land and repair the wall.

(g) A has an easement to have his land flooded by means of a dam in B's stream. The dam is half swept away by an inundation. A may enter upon B's land and repair the dam.

Liability for
expenses ne-
cessary for
preservation
of easement

25. The expenses incurred in constructing works, or making repairs, or doing any other act necessary for the use or preservation of an easement, must be defrayed by the dominant owner.

Liability for
damage from
want of repair

26. Where an easement is enjoyed by means of an artificial work, the dominant owner is liable to make compensation for any damage to the servient heritage arising from the want of repair of such work ¹.

Servient
owner not
bound to do
anything

27. The servient owner is not bound to do anything for the benefit of the dominant heritage, and he is entitled, as against the dominant owner, to use the servient heritage in any way consistent with the enjoyment of the easement, but he must not do any act tending to restrict the easement or to render its exercise less convenient.

Illustrations

(a) A, as owner of a house, has a right to lead water and send sewage through B's land. B is not bound, as servient owner, to clear the watercourse or scour the sewer.

(b) A grants a right of way through his land to B as owner of a field. A may feed his cattle on grass growing on the way, provided that B's right of way is not thereby obstructed, but he must not build a wall at the end of his land so as to prevent B from going beyond it, nor must he narrow the way so as to render the exercise of the right less easy than it was at the date of the grant.

(c) A, in respect of his house, is entitled to an easement of support from B's wall. B is not bound, as servient owner, to keep the wall standing and in repair. But he must not pull down or weaken the wall so as to make it incapable of rendering the necessary support.

(d) A, in respect of his mill, is entitled to a watercourse through B's land. B must not drive stakes so as to obstruct the watercourse.

(e) A, in respect of his house, is entitled to a certain quantity of light passing over B's land. B must not plant trees so as to obstruct the passage to A's windows of that quantity of light.

Extent of
easements

28. With respect to the extent of easements and the mode of their enjoyment, the following provisions shall take effect —

Easement of
necessity

An easement of necessity is co-extensive with the necessity as it existed when the easement was imposed.

¹ But see s. 50, *infra*, as to extinguishment or suspension of easement.

(Chapter III—The Incidents of Easements)

The extent of any other easement and the mode of its enjoyment must be fixed with reference to the probable intention of the parties and the purpose for which the right was imposed or acquired

Other easements

In the absence of evidence as to such intention and purpose—

- (a) a right of way of any one kind does not include a right of way of any other kind Right of way
- (b) the extent of a right to the passage of light or air to a certain window, door or other opening, imposed by a testamentary or non-testamentary instrument, is the quantity of light or air that entered the opening at the time the testator died or the non-testamentary instrument was made Right to light or air acquired by grant
- (c) the extent of a prescriptive right to the passage of light or air to a certain window, door or other opening is that quantity of light or air which has been accustomed to enter that opening during the whole of the prescriptive period irrespectively of the purposes for which it has been used Prescriptive right to light or air.
- (d) the extent of a prescriptive right to pollute air or water is the extent of the pollution at the commencement of the period of user on completion of which the right arose and Prescriptive right to pollute air or water
- (e) the extent of every other prescriptive right and the mode of its enjoyment must be determined by the accustomed user of the right Other prescriptive rights

29 The dominant owner cannot, by merely altering or adding to the dominant heritage, substantially increase an easement Increase of easement

Where an easement has been granted or bequeathed so that its extent shall be proportionate to the extent of the dominant heritage, if the dominant heritage is increased by alluvion, the easement is proportionately increased, and, if the dominant heritage is diminished by diluvion, the easement is proportionately diminished

Save as aforesaid, no easement is affected by any change in the extent of the dominant or the servient heritage

Illustrations

(a) A, the owner of a mill, has acquired a prescriptive right to divert to his mill part of the water of a stream A alters the machinery of his mill He cannot thereby increase his right to divert water

(b) A has acquired an easement to pollute a stream by carrying on a manufacture on its banks by which a certain quantity of foul matter is discharged into it A extends his works and thereby increases the quantity discharged He is responsible to the lower riparian owners for injury done by such increase

(c) A, as the owner of a farm, has a right to take, for the purpose of manuring his farm, leaves which have fallen from the trees on B's land A buys a field and unites it to his farm A is not thereby entitled to take leaves to manure this field

30. Where a dominant heritage is divided between two or more persons, the easement becomes annexed to each of the shares, but not so as to Partition of dominant heritage

(Chapter III —The Incidents of Easements Chapter IV —The
Disturbance of Easements)

increase substantially the burden on the servient heritage Provided that such annexation is consistent with the terms of the instrument, decree or revenue-proceeding (if any) under which the division was made, and, in the case of prescriptive rights, with the user during the prescriptive period

Illustrations

(a) A house to which a right of way by a particular path is annexed is divided into two parts, one of which is granted to A, the other to B Each is entitled, in respect of his part, to a right of way by the same path

(b) A house to which is annexed the right of drawing water from a well to the extent of fifty buckets a day is divided into two distinct heritages, one of which is granted to A, the other to B A and B are each entitled, in respect of his heritage, to draw from the well fifty buckets a day, but the amount drawn by both must not exceed fifty buckets a day

(c) A, having in respect of his house an easement of light, divides the house into three distinct heritages Each of these continues to have the right to have its windows unobstructed

Obstruction
in case of ex-
cessive user

31. In the case of excessive use of an easement the servient owner may, without prejudice to any other remedies to which he may be entitled, obstruct the user, but only on the servient heritage Provided that such user cannot be obstructed when the obstruction would interfere with the lawful enjoyment of the easement

Illustration

A, having a right to the free passage over B's land of light to four windows, six feet by four, increases their size and number It is impossible to obstruct the passage of light to the new windows without also obstructing the passage of light to the ancient windows B cannot obstruct the excessive user

CHAPTER IV

THE DISTURBANCE OF EASEMENTS

Right to
enjoyment
without
disturbance

32. The owner or occupier of the dominant heritage is entitled to enjoy the easement without disturbance by any other person

Illustration

A, as owner of a house, has a right of way over B's land C unlawfully enters on B's land, and obstructs A in his right of way A may sue C for compensation, not for the entry, but for the obstruction

Suit for dis-
turbance of
easement

33. The owner of any interest in the dominant heritage, or the occupier of such heritage, may institute a suit for compensation for the disturbance of the easement or of any right accessory thereto ; provided that the disturbance has actually caused substantial damage to the plaintiff

Explanation I—The doing of any act likely to injure the plaintiff by affecting the evidence of the easement, or by materially diminishing the value of the dominant heritage, is substantial damage within the meaning of this section and section 34

(Chapter IV —The Disturbance of Easements Chapter V —The
Extinction, Suspension and Revival of Easements)

Explanation II —Where the easement disturbed is a right to the free passage of light passing to the openings in a house, no damage is substantial within the meaning of this section unless it falls within the first Explanation, or interferes materially with the physical comfort of the plaintiff, or prevents him from carrying on his accustomed business in the dominant heritance as beneficially as he had done previous to instituting the suit

Explanation III —Where the easement disturbed is a right to the free passage of air to the openings in a house, damage is substantial within the meaning of this section if it interferes materially with the physical comfort of the plaintiff, though it is not injurious to his health

Illustrations

(a) A places a permanent obstruction in a path over which B, as tenant of C's house, has a right of way. This is substantial damage to C, for it may affect the evidence of his reversionary right to the easement

(b) A, as owner of a house, has a right to walk along one side of B's house. B builds a verandah overhanging the way about ten feet from the ground, and so as not to occasion any inconvenience to foot-passengers using the way. This is not substantial damage to A

34 The removal of the means of support to which a dominant owner is entitled does not give rise to a right to recover compensation unless and until substantial damage is actually sustained

When cause
of action
arises for
removal of
support

377

35. Subject to the provisions of the Specific Relief Act, 1877, sections 52 to 57 (both inclusive), an injunction may be granted to restrain the disturbance of an easement—

Injunction
to restrain
disturbance

(a) if the easement is actually disturbed—when compensation for such disturbance might be recovered under this Chapter

(b) if the disturbance is only threatened or intended—when the act threatened or intended must necessarily, if performed, disturb the easement

36. Notwithstanding the provisions of section 24, the dominant owner cannot himself abate a wrongful obstruction of an easement

Abatement of
obstruction
of easement

CHAPTER V

THE EXTINCTION, SUSPENSION AND REVIVAL OF EASEMENTS

37. When, from a cause which preceded the imposition of an easement, the person by whom it was imposed ceases to have any right in the servient heritance, the easement is extinguished.

Extinction by
dissolution of
right of ser-
vient owner

Exception —Nothing in this section applies to an easement lawfully imposed by a mortgagor in accordance with section 10

Illustrations

(a) A transfers Sultanpur to B on condition that he does not marry C. B imposes an easement on Sultanpur. Then B marries C. B's interest in Sultanpur ends, and with it the easement is extinguished

(Chapter V —The Extinction, Suspension and Revival of Easements)

(b) A, in 1860, let Sultanpur to B for thirty years from the date of the lease. B, in 1861, imposes an easement on the land in favour of C, who enjoys the easement peaceably and openly as an easement without interruption for twenty-nine years. B's interest in Sultanpur then ends, and with it C's easement.

(c) A and B, tenants of C, have permanent transferable interests in their respective holdings. A imposes on his holding an easement to draw water from a tank for the purpose of irrigating B's land. B enjoys the easement for twenty years. Then A's rent falls into arrear and his interest is sold. B's easement is extinguished.

(d) A mortgages Sultanpur to B, and lawfully imposes an easement on the land in favour of C in accordance with the provisions of section 10. The land is sold to D in satisfaction of the mortgage debt. The easement is not thereby extinguished.

Extinction
by release

- 38. An easement is extinguished when the dominant owner releases it, expressly or impliedly, to the servient owner.

Such release can be made only in the circumstances and to the extent in and to which the dominant owner can alienate the dominant heritage.

An easement may be released as to part only of the servient heritage.

Explanation I—An easement is impliedly released—

(a) where the dominant owner expressly authorizes an act of a permanent nature to be done on the servient heritage, the necessary consequence of which is to prevent his future enjoyment of the easement, and such act is done in pursuance of such authority,

(b) where any permanent alteration is made in the dominant heritage of such a nature as to show that the dominant owner intended to cease to enjoy the easement in future.

Explanation II.—Mere non-user of an easement is not an implied release within the meaning of this section.

Illustrations

(a) A, B and C are co-owners of a house to which an easement is annexed. A, without the consent of B and C, releases the easement. This release is effectual only as against A and his legal representative.

(b) A grants B an easement over A's land for the beneficial enjoyment of his house. B assigns the house to C. B then purports to release the easement. The release is ineffectual.

(c) A, having the right to discharge his eavesdroppings into B's yard, expressly authorizes B to build over this yard to a height which will interfere with the discharge. B builds accordingly. A's easement is extinguished to the extent of the interference.

(d) A, having an easement of light to a window, builds up that window with bricks and mortar so as to manifest an intention to abandon the easement permanently. The easement is impliedly released.

(e) A, having a projecting roof by means of which he enjoys an easement to discharge eavesdroppings on B's land, permanently alters the roof so as to direct the rain-water into a different channel and discharge it on C's land. The easement is impliedly released.

Extinction by
revocation

39. An easement is extinguished when the servient owner, in exercise of a power reserved in this behalf, revokes the easement.

Extinction
on expiration
of limited

40. An easement is extinguished where it has been imposed for a limited period, or acquired on condition that it shall become void on the

(Chapter V —The Extinction, Suspension and Revival of Easements)

performance or non-performance of a specified act, and the period expires or the condition is fulfilled

period or
happening of
dissolving
condition

41. An easement of necessity is extinguished when the necessity comes to an end

Extinction or
termination
of necessity

Illustration

A grants B a field inaccessible except by passing over A's adjoining land. B afterwards purchases a part of that land over which he can pass to his field. The right of way over A's land which B had acquired is extinguished.

42. An easement is extinguished when it becomes incapable of being at any time and under any circumstances beneficial to the dominant owner

Extinction
of useless
easement

43. Where, by any permanent change in the dominant herbage, the burden on the servient herbage is materially increased and cannot be reduced by the servient owner without interfering with the lawful enjoyment of the easement, the easement is extinguished, unless—

Extinction
by permanen
change in
dominant
herbage

(a) it was intended for the beneficial enjoyment of the dominant herbage, to whatever extent the easement should be used, or

(b) the injury caused to the servient owner by the change is so slight that no reasonable person would complain of it; or

(c) the easement is an easement of necessity

Nothing in this section shall be deemed to apply to an easement entitling the dominant owner to support of the dominant herbage.

44. An easement is extinguished where the servient herbage is by superior force so permanently altered that the dominant owner can no longer enjoy such easement

Extinction
on permanen
alteration of
servient herri
age by superi
or force

Provided that, where a way of necessity is destroyed by superior force, the dominant owner has a right to another way over the servient herbage, and the provisions of section 14 apply to such way

Illustrations

(a) A grants to B, as the owner of a certain house, a right to fish in a river running through A's land. The river changes its course permanently and runs through C's land. B's easement is extinguished.

(b) Access to a path over which A has a right of way is permanently cut off by an earthquake. A's right is extinguished.

45. An easement is extinguished when either the dominant or the servient herbage is completely destroyed

Extinction b
destruction
of either
herbage

Illustration

A has a right of way over a road running along the foot of a sea-cliff. The road is washed away by a permanent encroachment of the sea. A's easement is extinguished.

46. An easement is extinguished when the same person becomes entitled to the absolute ownership of the whole of the dominant and servient herbage

Extinction
by unity of
ownership

(Chapter V—*The Extinction, Suspension and Revival of Easements*)*Illustrations*

(a) A, as the owner of a house, has a right of way over B's field. A mortgages his house and B mortgages his field to C. Then C forecloses both mortgages and becomes thereby absolute owner of both house and field. The right of way is extinguished.

(b) The dominant owner acquires only part of the servient heritage. The easement is not extinguished, except in the case illustrated in section 41.

(c) The servient owner acquires the dominant heritage in connection with a third person. The easement is not extinguished.

(d) The separate owners of two separate dominant heritages jointly acquire the heritage which is servient to the two separate heritages. The easements are not extinguished.

(e) The joint owners of the dominant heritage jointly acquire the servient heritage. The easement is extinguished.

(f) A single right of way exists over two servient heritages for the beneficial enjoyment of a single dominant heritage. The dominant owner acquires one only of the servient heritages. The easement is not extinguished.

(g) A has a right of way over B's road. B dedicates the road to the public. A's right of way is not extinguished.

Extinction
by non-
enjoyment

47. A continuous easement is extinguished when it totally ceases to be enjoyed as such for an unbroken period of twenty years.

A discontinuous easement is extinguished when, for a like period, it has not been enjoyed as such.

Such period shall be reckoned, in the case of a continuous easement, from the day on which its enjoyment was obstructed by the servient owner, or rendered impossible by the dominant owner, and, in the case of a discontinuous easement, from the day on which it was last enjoyed by any person as dominant owner.

Provided that if, in the case of a discontinuous easement, the dominant owner, within such period, registers, under the Indian Registration Act, 1877,¹ a declaration of his intention to retain such easement, it shall not be extinguished until a period of twenty years has elapsed from the date of the registration. III of 18

Where an easement can be legally enjoyed only at a certain place, or at certain times or between certain hours, or for a particular purpose, its enjoyment during the said period at another place, or at other times, or between other hours, or for another purpose, does not prevent its extinction under this section.

The circumstance that, during the said period, no one was in possession of the servient heritage, or that the easement could not be enjoyed, or that a right accessory thereto was enjoyed, or that the dominant owner was not aware of its existence, or that he enjoyed it in ignorance of his right to do so, does not prevent its extinction under this section.

An easement is not extinguished under this section—

(a) where the cessation is in pursuance of a contract between the dominant and servient owners,

¹ See now the Indian Registration Act, 1908 (16 of 1908)

(Chapter V—The Extinction, Suspension and Revival of Easements)

(b) where the dominant heritage is held in co-ownership, and one of the co-owners enjoys the easement within the said period, or

(c) where the easement is a necessary easement

Where several heritages are respectively subject to rights of way for the benefit of a single heritage, and the ways are continuous, such rights shall, for the purposes of this section, be deemed to be a single easement

Illustration

A has, as annexed to his house, rights of way from the high road thither over the heritages X and Z and the intervening heritage Y. Before the twenty years expire, A exercises his right of way over X. His rights of way over Y and Z are not extinguished

48. When an easement is extinguished, the rights (if any) accessory thereto are also extinguished

Extinction of accessory rights

Illustration

A has an easement to draw water from B's well. As accessory thereto, he has a right of way over B's land to and from the well. The easement to draw water is extinguished under section 47. The right of way is also extinguished

49. An easement is suspended when the dominant owner becomes entitled to possession of the servient heritage for a limited interest therein, or when the servient owner becomes entitled to possession of the dominant heritage for a limited interest therein

Suspension of easement

50. The servient owner has no right to require that an easement be continued, and, notwithstanding the provisions of section 26, he is not entitled to compensation for damage caused to the servient heritage in consequence of the extinguishment or suspension of the easement, if the dominant owner has given to the servient owner such notice as will enable him, without unreasonable expense, to protect the servient heritage from such damage

Servient owner not entitled to require continuance

Where such notice has not been given, the servient owner is entitled to compensation for damage caused to the servient heritage in consequence of such extinguishment or suspension

Compensation for damage caused by extinguishment or suspension

Illustration

A, in exercise of an easement, diverts to his canal the water of B's stream. The diversion continues for many years, and during that time the bed of the stream partly fills up. A then abandons his easement, and restores the stream to its ancient course. B's land is consequently flooded. B sues A for compensation for the damage caused by the flooding. It is proved that A gave B a month's notice of his intention to abandon the easement, and that such notice was sufficient to enable B, without unreasonable expense, to have prevented the damage. The suit must be dismissed

51. An easement extinguished under section 45 revives (a) when the destroyed heritage is, before twenty years have expired, restored by the deposit of alluvion, (b) when the destroyed heritage is a servient building and before twenty years have expired such building is rebuilt upon the same site, and (c) when the destroyed heritage is a dominant building and before twenty years have expired such building is rebuilt upon the same

Revival of easements

(Chapter V —The Extinction, Suspension and Revival of Easements
Chapter VI —Licenses)

site and in such a manner as not to impose a greater burden on the servient herbage

An easement extinguished under section 46 revives when the grant or bequest by which the unity of ownership was produced is set aside by the decree of a competent Court. A necessary easement extinguished under the same section revives when the unity of ownership ceases from any other cause.

A suspended easement revives if the cause of suspension is removed before the right is extinguished under section 47.

Illustration

A, as the absolute owner of field Y, has a right of way thither over B's field Z. A obtains from B a lease of Z for twenty years. The easement is suspended so long as A remains lessee of Z. But when A assigns the lease to C, or surrenders it to B, the right of way revives.

CHAPTER VI

LICENSES

“License”
defined

52. Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immoveable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a license.

Who may
grant license

53. A license may be granted by any one, in the circumstances and to the extent in and to which he may transfer his interests in the property affected by the license.

Grant may
be express or
implied

54. The grant of a license may be express or implied from the conduct of the grantor, and an agreement which purports to create an easement, but is ineffectual for that purpose, may operate to create a license.

Accessory
licenses an-
nexed by law

55. All licenses necessary for the enjoyment of any interest, or the exercise of any right, are implied in the constitution of such interest or right. Such licenses are called accessory licenses.

Illustration

A sells the trees growing on his land to B. B is entitled to go on the land and take away the trees.

License when
transferable

56. Unless a different intention is expressed or necessarily implied, a license to attend a place of public entertainment may be transferred by the licensee; but, save as aforesaid, a license cannot be transferred by the licensee or exercised by his servants or agents.

Illustrations

(a) A grants B a right to walk over A's field whenever he pleases. The right is not annexed to any immoveable property of B. The right cannot be transferred.

(b) The Government grants B a license to erect and use temporary grain-sheds on Government land. In the absence of express provision to the contrary, B's servants may enter on the land for the purpose of erecting sheds, erect the same, deposit grain therein and remove grain therefrom.

(Chapter VI—Licenses)

57. The grantor of a license is bound to disclose to the licensee any defect in the property affected by the license, likely to be dangerous to the person or property of the licensee, of which the grantor is, and the licensee is not, aware

Grantor's
duty to dis-
close defects

58. The grantor of a license is bound not to do anything likely to render the property affected by the license dangerous to the person or property of the licensee

Grantor's
duty not to
render pro-
perty unsafe

59. When the grantor of the license transfers the property affected thereby, the transferee is not as such bound by the license

Grantor's
transferee
not bound
by license

60. A license may be revoked by the grantor, unless—

License when
revocable

(a) it is coupled with a transfer of property and such transfer is in force

(b) the licensee, acting upon the license, has executed a work of a permanent character and incurred expenses in the execution

61. The revocation of a license may be express or implied

Revocation
express or
implied

Illustrations

(a) A, the owner of a field, grants a license to B to use a path across it. A, with intent to revoke the license, locks a gate across the path. The license is revoked

(b) A, the owner of a field, grants a license to B to stack hay on the field. A lets or sells the field to C. The license is revoked

62. A license is deemed to be revoked—

License
when deemed
revoked

(a) when, from a cause preceding the grant of it, the grantor ceases to have any interest in the property affected by the license.

(b) when the licensee releases it, expressly or impliedly, to the grantor or his representative.

(c) where it has been granted for a limited period, or acquired on condition that it shall become void on the performance or non-performance of a specified act, and the period expires or the condition is fulfilled.

(d) where the property affected by the license is destroyed or by superior force so permanently altered that the licensee can no longer exercise his right.

(e) where the licensee becomes entitled to the absolute ownership of the property affected by the license.

(f) where the license is granted for a specified purpose and the purpose is attained, or abandoned, or becomes impracticable.

(g) where the license is granted to the licensee as holding a particular office, employment or character, and such office, employment or character ceases to exist.

(h) where the license totally ceases to be used as such for an unbroken period of twenty years, and such cessation is not

(Chapter VI—Licenses)

Powers-of-Attorney

[1882: Act VII.]

in pursuance of a contract between the grantor and the licensee

(*) in the case of an accessory license, when the interest or right to which it is accessory ceases to exist

Licensee's
rights on
revocation

63. Where a license is revoked, the licensee is entitled to a reasonable time to leave the property affected thereby and to remove any goods which he has been allowed to place on such property

Licensee's
rights on
eviction

64. Where a license has been granted for a consideration, and the licensee, without any fault of his own, is evicted by the grantor before he has fully enjoyed, under the license, the right for which he contracted, he is entitled to recover compensation from the grantor

THE POWERS-OF-ATTORNEY ACT, 1882
ACT No VII OF 1882¹

[24th February, 1882]

An Act to amend the law relating to Powers-of-Attorney

For the purpose of amending the law relating to Powers-of-Attorney, It is hereby enacted as follows —

Short title
Local extent
Commence-
ment
Execution
under power-
of-attorney

1. This Act may be called the Powers-of-Attorney Act, 1882
It applies² [all the Provinces of India],
and it shall come into force on the first day of May, 1882

2. The donee of a power-of-attorney may, if he thinks fit, execute or do any assurance, instrument or thing in and with his own name and signature, and his own seal, where sealing is required, by the authority of the donor of the power, and every assurance, instrument and thing so executed and done, shall be as effectual in law as if it had been executed or done by the donee of the power in the name, and with the signature and seal, of the donor thereof

This section applies to powers-of-attorney created by instruments executed either before or after this Act comes into force

Payment by
attorney
under power,
without
notice of
death, etc.,
good

3. Any person making or doing any payment or act in good faith, in pursuance of a power-of-attorney, shall not be liable in respect of the payment or act by reason that, before the payment or act, the donor of the power had died or become lunatic, of unsound mind, or bankrupt, or insolvent, or had revoked the power, if the fact of death, lunacy, unsoundness of mind, bankruptcy, insolvency or revocation was not, at the

¹ For Statement of Objects and Reasons, see Gazette of India, 1881, Pt V, p 1473, for Proceedings in Council, see *ibid*, 1881, Supplement, p 1409, and *ibid*, 1882, Supplement, p 204

This Act has been declared to be in force in the Sonthal Parganas by the Sonthal Parganas Settlement Regulation (3 of 1872), s 3

² Subs by the A O 1948 for "the whole of British India".

time of the payment or act, known to the person making or doing the same

But this section shall not affect any right against the payee of any person interested in any money so paid, and that person shall have the like remedy against the payee as he would have had against the payer, if the payment had not been made by him

This section applies only to payments and acts made or done after this Act comes into force

4 (a) An instrument creating a power-of-attorney, its execution being verified by affidavit, statutory declaration or other sufficient evidence, may, with the affidavit or declaration, if any, be deposited in the High Court within the local limits of whose jurisdiction the instrument may be Deposit of original instruments creating powers-of-attorney

(b) A separate file of instruments so deposited shall be kept, and any person may search that file, and inspect every instrument so deposited, and a certified copy thereof shall be delivered out to him on request

(c) A copy of an instrument so deposited may be presented at the office and may be stamped or marked as a certified copy, and, when so stamped or marked, shall become and be a certified copy

(d) A certified copy of an instrument so deposited shall, without further proof, be sufficient evidence of the contents of the instrument and of the deposit thereof in the High Court

(e) The High Court may, from time to time, make rules for the purposes of this section, and prescribing, with the concurrence of the ¹[Provincial Government], the fees to be taken under clauses (a), (b) and (c) || 4

2* * * * *

(g) This section applies to instruments creating powers-of-attorney executed either before or after this Act comes into force

5. A married woman, whether a minor or not, shall, by virtue of this Act, have power, as if she were unmarried and of full age, by a non-testamentary instrument, to appoint an attorney on her behalf, for the purpose of executing any non-testamentary instrument or doing any other act which she might herself execute or do, and the provisions of this Act, relating to instruments creating powers-of-attorney, shall apply thereto Power-of-attorney of married women

This section applies only to instruments executed after this Act comes into force

6. [Act XXVIII of 1866, s 39, repealed] Rep by the Amending Act, 1891 (XII of 1891)

¹ Subs by the A O, 1937 for "L G"

² Cl (f) rep by the Lower Burma Courts Act, 1900 (6 of 1900), s 48 and Sch II

THE PRESIDENCY SMALL CAUSE COURTS ACT, 1882.

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- 78 [*Repealed*]
- 79 Default of bailiff or other officer in execution of order or warrant.
- 80 Extortion or default of officers.
- 81. Court empowered to summon witnesses, etc.
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88 Appeal from orders under section 87

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90. Registers and returns

91 Court to furnish records, etc., called for by Provincial Government or High Court

92 Holidays and vacations

93 Certain persons exempt from arrest by Court

94 No surt to lie upon decree of Court

95 Place of imprisonment

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97 Limitation of prosecutions

THE FIRST SCHEDULE — [*Repealed*]THE SECOND SCHEDULE — [*Repealed*]

THE THIRD SCHEDULE — FORMS OF AFFIDAVIT, WARRANT, INVENTORY, ETC

THE FOURTH SCHEDULE — FEES FOR SUMMONSES AND OTHER PROCESSES

ACT No XV OF 1882¹

[17th March, 1882.]

An Act to consolidate and amend the law relating to the Courts of Small Causes established in the Presidency-towns.

Preamble

WHEREAS it is expedient to consolidate and amend the law relating to the Courts of Small Causes established in the towns of Calcutta, Madras and Bombay, It is hereby enacted as follows —

¹ For Statement of Objects and Reasons, see Gazette of India, 1880, Pt V, p 376, for first Report of the Select Committee, see *ibid.*, 1881, Pt V, p 381, for further Report of the Select Committee, see *ibid.*, 1882, Pt V, p 3, for Proceedings in Council, see *ibid.*, Supplement, 1880, pp 1394 and 1433, *ibid.*, 1882, Supplement, p 204, and *ibid.*, 1882, Extra Supplement, p 43

For portions of the Code of Civil Procedure extended to the Presidency Small Cause Court at Calcutta, see Schedule A to Rules of Practice, Calcutta Gazette, 1900, Pt I, p 814

(Chapter I—Preliminary Chapter II—Constitution and Officers of the Court)

CHAPTER I

PRELIMINARY

1. This Act may be called the Presidency Small Cause Courts Act, 1882, and it shall come into force on the first day of July, 1882

Short title
Commence-
ment

But nothing herein contained shall affect the provisions of the Army Act, ¹* * section 151,² or the rights or liabilities of any person under any decree passed before that day

2. [Repeal of enactments] Rep by the Repealing Act, 1938 (I of 1938), s 2 and Sch.

3. [Amendments of Acts] Rep by the Repealing Act, 1938 (I of 1938), s 2 and Sch

4. In this Act, "the Small Cause Court" means the Court of Small Causes constituted under this Act in the town of Calcutta, Madras or Bombay, as the case may be, ³[and the expression "Registrar" includes a Deputy Registrar]

"Small
Cause Court"
defined

CHAPTER II.

CONSTITUTION AND OFFICERS OF THE COURT

5. There shall be in each of the towns of Calcutta, Madras and Bombay a Court, to be called the Court of Small Causes of Calcutta, Madras or Bombay, as the case may be

Courts of
Small Causes
established

6. The Small Cause Court shall be deemed to be a Court subject to the superintendence of the High Court of Judicature at Fort William, Madras or Bombay, as the case may be, within the meaning of the Letters Patent, respectively, dated the twenty-eighth day of December, 1865, for such High Courts, and within the meaning of the 'Code of Civil Procedure' ⁵[and to be a Court subordinate to the High Court within the meaning of section 6 of the Legal Practitioners Act, 1879], and the High Court shall have, in respect of the Small Cause Court, the same powers as it has under the 'twenty-fourth and twenty-fifth of Victoria, Chapter 104, section 15, in respect of Courts subject to its appellate jurisdiction

Court to be
deemed
under super-
intendence,
etc., of High
Court

⁷[7. There shall be appointed from time to time a Chief Judge of the Small Cause Court and as many other Judges as the Provincial Government thinks fit]

Appointmen
of Judges

State

¹ The figures "1881" rep by the Amending Act, 1891 (12 of 1891), s 2, and Sch I

² Coll Stat, Vol I

³ Ins by the Presidency Small Cause Courts Act, 1899 (3 of 1899), s 2

⁴ See now the Code of Civil Procedure, 1908 (Act 5 of 1908)

⁵ Ins by the Presidency Small Cause Courts Act, 1895 (1 of 1895), s 2

⁶ The Indian High Courts Act, 1861, rep by the G of I Act, 1915 See now the G of I Act, 1935 (26 Geo. 5, Ch 2), s 224

⁷ Subs by the A O 1937 for the original s 7 Cf ss 254 and 255 of the G. of I. Act, 1935 (26 Geo. 5, Ch 2)

(Chapter II—Constitution and Officers of the Court.)

Rank and
precedence
of Judges

8. The Chief Judge shall be the first of the Judges in rank and precedence

The other Judges shall have rank and precedence as the ^{State} ~~Provincial~~ Government] may, from time to time, direct

Performance
of duties of
absent Judge

²[8A. (1) During any absence of the Chief Judge or any Judge of the said Court, or during the period for which any Judge is acting as Chief Judge, the ^{State} ~~Provincial~~ Government] may appoint any person, having ³[the requisite qualifications], to act as Chief Judge or Judge of the said Court, as the case may be

(2) Every person so appointed shall be authorized to perform the duties of the Chief Judge or a Judge of the said Court until the return of the absent Chief Judge or Judge, or of the Judge acting as Chief Judge, or until the ^{State} ~~Provincial~~ Government] sees cause to cancel the appointment of such acting Chief Judge or Judge, as the case may be]

Procedure
and practice
of Small
Cause Court

⁴[9. (1) The High Court may, from time to time, by rules⁵ having the force of law,—

(a) prescribe the procedure to be followed and the practice to be observed by the Small Cause Court either in supersession of or in addition to any provisions which were prescribed with respect to the procedure or practice of the Small Cause Court on or before the thirty-first day of December, 1894, in or under this Act or any other enactment for the time being in force, and

⁶[(aa) empower the Registrar to hear and dispose of undefended suits and interlocutory applications or matters, and]

(b) cancel or vary any such rule or rules

Rules made under this section may provide, among other matters, for the exercise by one or more of the Judges of the Small Cause Court of any powers conferred on the Small Cause Court by this Act or any other enactment for the time being in force.

(2) The law, and any rules and declarations made, or purporting to be made, thereunder, with respect to procedure or practice, in force or treated as in force in the Small Cause Court on the thirty-first day of December, 1894, shall be in force, unless and until cancelled or varied by rules made by the High Court under this section]

¹ Subs by the A O 1937 for "L G"

² Subs by the Presidency Small Cause Courts Act, 1899 (3 of 1899), s 3, for the original s 8A which had been ins by the Presidency Small Cause Courts Act, 1895 (1 of 1895), s 4

³ Subs by the A O 1937 for "the qualifications required by s 7" As to requisite qualifications of Chief Judge, see the G of I. Act, 1935 (26 Geo 5, Ch 2), s 254 (2), of other Judges see rules under s 255 (1), *ibid*

⁴ Subs by Act 1 of 1895, s. 5, for the original section

⁵ Cf the Code of Civil Procedure, 1908 (Act 5 of 1908), s 8, proviso

⁶ Ins by the Presidency Small Cause Courts Act, 1899 (3 of 1899), s 4

(Chapter II—Constitution and Officers of the Court)

10. Subject to such rules, the Chief Judge may, from time to time, make such arrangements as he thinks fit for the distribution of the business of the Court among the various Judges thereof

Chief Judge
to distribute
business
of Court

11. Save as hereinafter otherwise provided, when two or more of the Judges sitting together differ on any question, the opinion of the majority shall prevail, and if the Court is equally divided, the Chief Judge, if he is one of the Judges so differing, or, in his absence, the Judge first in rank and precedence of the Judges so differing, shall have the casting voice

Procedure
in case of
difference of
opinion

12. The Small Cause Court shall use a seal of such form and dimensions as are for the time being prescribed by the ¹[Provincial Government]

Seal to be
used

²[13. There shall be appointed an officer to be called the Registrar of the Court who shall be the chief ministerial officer of the Court, there shall also be appointed a Deputy Registrar and as many clerks, bailiffs and other ministerial officers as may be necessary for the administration of justice by the Court and for the exercise and performance of the powers and duties conferred and imposed on it by this Act or any other law for the time being in force]

Appointment
of Registrar
and other
officers

The Registrar and other officers so appointed shall exercise such powers and discharge such duties, of a ministerial nature, as the Chief Judge may, from time to time, by rule direct]

14. The ¹[~~Provincial~~ ^{State} Government] may invest the Registrar with the powers of a Judge under this Act for the trial of suits in which the amount or value of the subject-matter does not exceed twenty rupees. And subject to the orders of the Chief Judge, any Judge of the Small Cause Court may, whenever he thinks fit, transfer from his own file to the file of the Registrar any suit which the latter is competent to try

Registrar
may be in-
vested with
powers of a
Judge in
suits not
exceeding
twenty
rupees

³[*Explanation*—For the purposes of this section an application for possession under section 41 shall be deemed to be a suit]

15. No Judge or other officer appointed under this Act shall, during his continuance as such Judge or officer, either by himself or as a partner of any other person, practise or act, either directly or indirectly, as an advocate, attorney, vakil or other legal practitioner, or be concerned, either on his own account or for any other person, or as the partner of any other person, in any trade or profession

Judge or
other officer
not to prac-
tise or trade.

Any such Judge or officer so practising, acting or concerned shall be deemed to have committed an offence under section 168 of the Indian Penal Code.

XLV of 1860

¹ Subs by the A O 1937 for "L G "

² Subs by the A O 1937 for the original s 13.

³ Ins by the Presidency Small Cause Courts Act, 1895 (1 of 1895), s 6

(Chapter II—Constitution and Officers of the Court Chapter III—Law administered by the Court Chapter IV—Jurisdiction in respect of Suits)

Nothing herein contained shall be deemed to prohibit any such Judge or officer from being a member of any company incorporated or registered under Royal Charter, Letters Patent, Act of Parliament or Act of ~~the Central Legislature or of any Legislature established in a Province of India~~

*Act of Provincial Act of the Legislature of a part
A state or a part of state*

CHAPTER III

LAW ADMINISTERED BY THE COURT.

Questions arising in suits, etc., under Act to be decided according to law administered by High Court

16. All questions, other than questions relating to procedure or practice, which arise in suits or other proceedings under this Act in the Small Cause Court shall be dealt with and determined according to the law for the time being administered by the High Court in the exercise of its ordinary original civil jurisdiction.

CHAPTER IV.

JURISDICTION IN RESPECT OF SUITS

Local limits of jurisdiction of Court

17. The local limits of the jurisdiction of each of the Small Cause Courts shall be the local limits for the time being of the ordinary original civil jurisdiction of the High Court

Suits in which Court has jurisdiction.

18. Subject to the exceptions in section 19, the Small Cause Court shall have jurisdiction to try all suits of a civil nature—

when the amount or value of the subject-matter does not exceed two thousand rupees and—

- (a) the cause of action has arisen, either wholly or in part, within the local limits of the jurisdiction of the Small Cause Court, and the leave of the Court has, for reasons to be recorded by it in writing, been given, before the institution of the suit, or
- (b) all the defendants, at the time of the institution of the suit, actually and voluntarily reside, or carry on business or personally work for gain, within such local limits; or
- (c) any of the defendants at the time of the institution of the suit, actually and voluntarily resides, or carries on business or personally works for gain, within such local limits, and either the leave of the Court has been given before the institution of the suit, or the defendants who do not reside, or carry on

¹ Subs by the A O 1948 for "any British Indian Legislature"

(Chapter IV.—Jurisdiction in respect of Suits)

business, or personally work for gain, as aforesaid, acquiesce in such institution

¹[Provided that where the cause of action has arisen wholly within the local limits aforesaid, and the Court refuses to give leave for the institution of the suit, it shall record in writing its reasons for such refusal]

Explanation I—When in any suit the sum claimed is, by a set-off admitted by both parties, reduced to a balance not exceeding two thousand rupees, the Small Cause Court shall have jurisdiction to try such suit.

Explanation II—Where a person has a permanent dwelling at one place and also a lodging at another place for a temporary purpose only, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary lodging

Explanation III—A Corporation or Company shall be deemed to carry on business at its sole or principal office in ~~the~~ ^{one of the} Provinces, or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place

²[18A. The Small Cause Court may allow a plaintiff at or before the first hearing of a suit in which a joint and several liability is alleged on a cause of action arising either wholly or in part within the local limits of the jurisdiction of the Court to abandon the suit as against any defendant who does not reside or carry on business or personally work for gain within such local limits, and to sue for a decree against such defendants only as do so reside, carry on business or personally work for gain]

Plaintiff may
abandon suit
against de-
fendant resi-
dent out of
jurisdiction

19. The Small Cause Court shall have no jurisdiction in—

(a) suits concerning the assessment or collection of the revenue ,

Suits in
which Court
has no juris-
diction

³[(b) suits concerning any act done by or by order of the Central Government, the Crown Representative or the Provincial Government,]

(c) suits concerning any act ordered or done by any Judge or judicial officer in the execution of his office, or by any person in pursuance of any judgment or order of any Court or any such Judge or judicial officer ,

(d) suits for the recovery of immoveable property ;

(e) suits for the partition of immoveable property ;

¹ Ins by the Presidency Small Cause Courts Act, 1895 (1 of 1895), s 7

² Subs by the A O 1948 for "British India"

³ Ins by Act 1 of 1895, s 8

⁴ Subs by the A O 1937 for the original cl (b).

(Chapter IV — Jurisdiction in respect of Suits)

- (f) suits for the foreclosure or redemption of a mortgage of immoveable property ,
- (g) suits for the determination of any other right to or interest in immoveable property ,
- (h) suits for the specific performance or rescission of contracts ,
- (i) suits to obtain an injunction ,
- (j) suits for the cancellation or rectification of instruments ,
- (k) suits to enforce a trust ,
- (l) suits for a general average loss and suits on policies of insurance on sea-going vessels ,
- (m) suits for compensation in respect of collisions on the high seas ,
- (n) suits for compensation for the infringement of a patent, copyright or trade-mark ,
- (o) suits for a dissolution of partnership or for an account of partnership-transactions ,
- (p) suits for an account of property and its due administration under the decree of the Court ,
- (q) suits for compensation for libel, slander, malicious prosecution, adultery or breach of promise of marriage ,
- (r) suits for the restitution of conjugal rights, ¹* * * * or for a divorce ,
- (s) suits for declaratory decrees ,
- (t) suits for possession of a hereditary office ,
- (u) suits against Sovereign Princes or Ruling Chiefs, or against Ambassadors or Envoys of Foreign States ,
- (v) suits on any judgment of a High Court ,
- (w) suits the cognizance whereof by the Small Cause Court is barred by any law for the time being in force

Return of
plaint

²[19A. Whenever the Court finds that for want of jurisdiction it cannot finally determine the question at issue in the suit, it may at any stage of the proceedings return the plaint to be presented to a Court having jurisdiction to determine the question. When the Court so returns a plaint, it shall comply with the provisions of the second paragraph of section 57 of the Code of Civil Procedure³ and make such order with respect XIV of 1882.

¹The words "for the recovery of a wife" rep. by the Repealing and Amending Act, 1914 (10 of 1914), s. 3 and Sch. II.

²Ins. by the Presidency Small Cause Courts Act, 1895 (1 of 1895), s. 9.

³See now the Code of Civil Procedure, 1908 (Act 5 of 1908), Sch. I, Order VII, rule 10 (2).

(Chapter IV — Jurisdiction in respect of Suits)

XV of 1877

to costs as it may think just, and the Court shall for the purposes of the Indian Limitation Act, 1877,¹ be deemed to have been unable to entertain the suit by reason of defect of jurisdiction. When a plaint so returned is afterwards presented to a High Court, credit shall be given to the plaintiff for the amount of the court-fee paid in the Small Cause Court in respect of the plaint in the levy of any fees which according to the practice of the High Court are credited to the Government.]

20. When the parties to a suit, which, if the amount or value of the subject-matter thereof did not exceed two thousand rupees, would be cognizable by the Small Cause Court, have entered into an agreement² in writing that the Small Cause Court shall have jurisdiction to try such suit, the Court shall have jurisdiction to try the same, although the amount or value of the subject-matter thereof may exceed two thousand rupees

Court may by consent try suits beyond pecuniary limits of jurisdiction

Every such agreement shall be filed in the Small Cause Court, and, when so filed, the parties to it shall be subject to the jurisdiction of the Court, and shall be bound by its decision in such suit

21. All suits to which an officer of the Small Cause Court is, as such, a party, except suits in respect of property taken in execution of its process, or the proceeds or value thereof ³[and all suits whereof the amount or value of the subject-matter exceeds one thousand rupees] may be instituted in the High Court at the election of the plaintiff as if this Act had not been passed

Suits by and against officers of Court

22. If any suit cognizable by the Small Cause Court, other than a suit to which section 21 applies, is instituted in the High Court, and if in such suit the plaintiff obtains, in the case of a suit founded on contract, a decree for any matter of an amount or value less than ⁴[one thousand] rupees, and in the case of any other suit a decree for any matter of an amount or value of less than three hundred rupees, no cost shall be allowed to the plaintiff,

Costs when plaintiff sues in High Court in other cases cognizable by Small Cause Court

and if in any such suit the plaintiff does not obtain a decree, the defendant shall be entitled to his costs ⁵[as between attorney and client]

The foregoing rules shall not apply to any suit in which the Judge who tries the same certifies that it was one fit to be brought in the High Court

¹ See now the Indian Limitation Act, 1908 (9 of 1908)

² As to additional fee payable on the filing of such agreement, see s 71, *infra*

³ Ins by the Presidency Small Cause Courts Act, 1895 (1 of 1895), s 10

⁴ Subs by s 11, *ibid*, for "two thousand"

⁵ In the application of the Act to Madras, these words have been substituted by certain other words see the Madras City Civil Court and Presidency Small Cause Courts (Amendment) Act, 1945 (Mad 1 of 1945), s 3.

CHAPTER V.

PROCEDURE IN SUITS

23. [*Portions of Civil Procedure Code extending to Court*] Rep by the Presidency Small Cause Courts Act, 1895 (1 of 1895), s 12.

No written statement except in cases of set-off

24. Except in cases of set-off under the Code of Civil Procedure, section III,¹ no written statement shall be received unless required by the Court

Return of documents admitted in evidence

25. When a period of eight days from the decision of a suit has expired without any application for a new trial or re-hearing of such suit having been made, or when any such application has been made within such period and such application has been refused, or the new trial or re-hearing (as the case may be) has ended, any person, whether a party to the suit or not, desirous of receiving back any document produced by him in the suit and placed on the record, shall, unless the document is impounded under section 143 of the Code of Civil Procedure,² be entitled XIV of 1882 to receive back the same

Provided that a document may be returned at any time before any of such events on such terms as the Court may direct provided also that no document shall be returned which, by force of the decree, has become void or useless

On the return of a document which has been admitted in evidence, a receipt shall be given by the party receiving it, in a receipt-book to be kept for the purpose

Compensation payable by plaintiff to defendant in certain cases

26. In any suit in which the defendant appears and does not admit the claim, and the plaintiff does not obtain a decree for the full amount of his claim, the Small Cause Court may in its discretion order the plaintiff to pay to the defendant, by way of satisfaction for his trouble and attendance, such sum as it thinks fit

When any claim preferred, or objection made, under section 278 of the Code of Civil Procedure³ is disallowed, the Small Cause Court may in its discretion order the person preferring or making such claim or objection to pay to the decree-holder, or to the judgment-debtor, or to both by way of satisfaction as aforesaid, such sum or sums as it thinks fit XIV of 1882.

And when any claim or objection is allowed the Court may award such compensation by way of damages to the claimant or objector as it thinks fit, and the order of the Court awarding or refusing such compensation shall bar any suit in respect of injury caused by the attachment

¹ See now the Code of Civil Procedure, 1908 (Act 5 of 1908), Sch I, Order VIII, rule 6

² See now Order XIII, rule 8, *ibid*

³ See now Order XXI, rule 58, *ibid*.

(Chapter V—Procedure in Suits)

Any order under this section may, in default of payment of the amount payable thereunder, be enforced by the person in whose favour it is made against the person against whom it is made as if it were a decree of the Court.

27. Whenever the Small Cause Court issues a warrant for the arrest of a judgment-debtor or the attachment of his property, the decree-holder, or some other person on his behalf, shall accompany the officer of the Court entrusted with the execution of such warrant, and shall point out to such officer the judgment-debtor or the property to be attached, as the case may be

Decree-holder to accompany officer executing warrant.

28. When the judgment-debtor under any decree of the Small Cause Court is a tenant of immoveable property, anything attached to such property, and which he might before the termination of his tenancy lawfully remove without the permission of his landlord, shall, for the purpose of the execution of such decree ¹[and for the purpose of deciding all questions arising in the execution of such decree], be deemed to be moveable property and may, if sold in such execution, be severed by the purchaser, but shall not be removed by him from the property until he has done to the property whatever the judgment-debtor would have been bound to do to it if he had removed such thing

Things attached to immoveable property and removeable by tenant to be deemed moveable in execution

29. Whenever any judgment-debtor, who has been arrested or whose property has been seized in execution of a decree of the Small Cause Court, offers security to the satisfaction of such Court for payment of the amount which he has been ordered to pay and the costs, the Court may order him to be discharged or the property to be released

Discharge of judgment-debtor on sufficient security

30. Whenever it appears to the Small Cause Court that any judgment-debtor under its decree is unable, from sickness, poverty or other sufficient cause, to pay the amount of the decree, or, if such Court has ordered the same to be paid in instalments, the amount of any instalment thereof, it may, from time to time, for such time and upon such terms as it thinks fit, suspend the execution of such decree and discharge the debtor, or make such order as it thinks fit

Court may in certain cases suspend execution of decree

31. If the judgment-debtor under any decree of the Small Cause Court has not, within the local limits of its jurisdiction, moveable property sufficient to satisfy the decree, the Court may, on the application of the decree-holder, send the decree for execution—

Execution of decree of Small Cause Court by other Courts

(a) in the case of execution against immoveable property situate within such local limits—²[to the Madras City Civil Court or the High Court of Judicature at Fort William or Bombay, as the case may be],

¹ Ins. by the Presidency Small Cause Courts Act, 1906 (4 of 1906), s. 2

² Subs. by the Madras City Civil Court Act, 1892 (7 of 1892), s. 12, for "to the High Court".

(Chapter V —Procedure in Suits Chapter VI —New Trials and Appeals)

(b) in all other cases—to any Civil Court within the local limits of whose jurisdiction such judgment-debtor, or any moveable or immoveable property of such judgment-debtor, may be found

Procedure when decree transferred

The procedure prescribed by the Code of Civil Procedure¹ for the execution of decrees by Courts other than those which made them shall be the procedure followed in such cases XIV of 1882

Minors may sue in certain cases as if of full age

32 Notwithstanding anything contained in the Code of Civil Procedure¹ as applied by this Act, any minor may institute a suit for any sum of money not exceeding five hundred rupees, which may be due to him under section 70 of the Indian Contract Act, 1872, for wages or piece-work or for work as a servant, in the same manner as if he were of full age XIV of 1882. IX of 1872.

Power to delegate non-judicial duties

33. Any non-judicial or quasi-judicial act which the Code of Civil Procedure¹ as applied by this Act requires to be done by a Judge, and any act which may be done by a Commissioner appointed to examine and adjust accounts under section 394 of that Code as so applied, may be done by the Registrar of the Small Cause Court or by such other officer of that Court as that Court may, from time to time, appoint in this behalf XIV of 1882

The High Court may, from time to time, by rule, declare what shall be deemed to be non-judicial and quasi-judicial acts within the meaning of this section

Registrar to hear and determine suits like a Judge
Proviso

34. The suits cognizable by the Registrar under section 14 shall be heard and determined by him in like manner in all respects as a Judge of the Court might hear and determine the same

Provided that, subject to the control of the Chief Judge, any Judge of the Court may, whenever he thinks fit, transfer to his own file any suit on the file of the Registrar

Registrar may execute all decrees with the same powers as a Judge
Decrees and orders of Registrar to be subject to new trial as if made by a Judge

35. The Registrar may receive applications for the execution of decrees of any value passed by the Court, and may commit and discharge judgment-debtors, and make any order in respect thereof which a Judge of the Court might make under this Act

36 Every decree and order made by the Registrar in any suit or proceeding shall be subject to the same provisions in regard to new trial as if made by a Judge of the Court

²[CHAPTER VI

NEW TRIALS AND APPEALS

General finality of decrees and orders of Small Cause Court

37. Save as otherwise provided by this Chapter or by any other enactment for the time being in force, every decree and order of the Small Cause Court in a suit shall be final and conclusive

¹ See now the Code of Civil Procedure 1908 (Act 5 of 1908)

² Subs. by the Presidency Small Cause Courts Act, 1895 (1 of 1895), s. 13 for the original Chap. VI.

(Chapter VI—New Trials and Appeals)

38. Where a suit has been contested, the Small Cause Court may, on the application of either party, made within eight days from the date of the decree or order in the suit (not being a decree passed under section 522 of the 'Code of Civil Procedure), order a new trial to be held, or alter, set aside or reverse the decree or order, upon such terms as it thinks reasonable, and may, in the meantime, stay the proceedings

Explanation—Every suit shall be deemed to be contested in which the decree is made otherwise than by consent of or in default of appearance by the defendant

39. (1) In any suit instituted in a Small Cause Court in which the amount or value of the subject-matter exceeds the sum of one thousand rupees, the defendant or any one of the defendants may, before the day fixed by the summons for the appearance of the defendant or within eight days after the service of the summons on him, whichever period shall last expire, apply *ex parte* on an affidavit setting forth the facts on which he relies for his defence to a Judge of the High Court for an order removing the cause into the High Court ²

¹[(2) Unless the Judge is of opinion that the application has been made solely for the purpose of delay, the applicant shall be entitled to such order as of right

Provided that the removal directed by such order shall, unless the Judge otherwise directs, be conditional upon the applicant giving security, to the approval of the Judge, within a reasonable time to be prescribed in the order for the payment of the amount claimed and of the costs which may become payable by him to the plaintiff in respect of the said suit.]

(3) If the applicant fail or neglect to complete the required security (if any) within the prescribed time (if any), the said order shall be discharged and the suit shall proceed in the Small Cause Court as if such order had never been made

(4) If the plaintiff in any case which has been removed under this section into the High Court has abandoned a portion of his claim in order to be able to bring the suit within the jurisdiction of a Small Cause Court, he shall be permitted to revive the portion of his claim so abandoned

¹ See now the Code of Civil Procedure, 1908 (Act 5 of 1908), Sch II, s 16

² In Madras, the High Court on such an application may either remove the suit to its own file or transfer the same to the Madras City Civil Court, *see* the Madras City Civil Court and Presidency Small Cause Courts (Amendment) Act, 1916 (Mad 5 of 1916), s 3

³ Subs by the Presidency Small Cause Courts Act, 1906 (4 of 1906), s 3, for the original sub-section (2)

(Chapter VI—*New Trials and Appeals.* Chapter VII—*Recovery of Possession of Immoveable Property*)

Rules with respect to suits removed under the last foregoing section

40. (1) When a suit has been removed into the High Court under the last foregoing section, it shall be heard and disposed of by such Court in the exercise of its original jurisdiction, and the said Court shall have all the same powers and jurisdiction in respect thereof as if it had been originally instituted in such Court

(2) In every suit so removed as aforesaid the affidavit filed under section 39, sub-section (1), shall be treated as a written statement of the defendant tendered under section 110 of the Code of Civil Procedure¹ unless XIV of 1882 the Court shall otherwise order

(3) In every suit so removed as aforesaid credit shall be given to the plaintiff for the amount of the court-fee paid in the Small Cause Court in respect of the plaint in the levy of any fees which according to the practice of the High Court are payable to the Government]

CHAPTER VII

RECOVERY OF POSSESSION OF IMMOVEABLE PROPERTY

Summons against person occupying property without leave

241. When any person has had possession of any immoveable property situate within the local limits of the Small Cause Court's jurisdiction and of which the annual value at a rack-rent does not exceed ³[two] thousand rupees, as the tenant, or by permission, of another person, or of some person through whom such other person claims,

and such tenancy or permission has determined or been withdrawn, and such tenant or occupier or any person holding under or by assignment from him (hereinafter called the occupant) refuses to deliver up such property in compliance with a request made to him in this behalf by such other person,

such other person (hereinafter called the applicant) may apply⁴ to the Small Cause Court for a summons against the occupant, calling upon him to show cause, on a day therein appointed, why he should not be compelled to deliver up the property

Service of summons

42. The summons shall be served on the occupant in the manner provided by the Code of Civil Procedure⁵ for the service of a summons on XIV of 1882. a defendant

¹ See now the Code of Civil Procedure, 1908 (Act 5 of 1908), Sch I, Order VIII, rule 11

² S. 41 has been virtually amended and supplemented in the City of Madras by the Madras City Tenants' Protection Act 1921 (Mad 3 of 1921)

³ Subs by the Presidency Small Cause Courts (Amendment) Act, 1912 (9 of 1912), s. 2, for "one"

⁴ For fee on such application, see s. 71, *infra*

⁵ See now the Code of Civil Procedure, 1908 (Act 5 of 1908)

(Chapter VII - Recovery of Possession of Immoveable Property)

43. If the occupant does not appear at the time appointed and show cause to the contrary, the applicant shall, if the Small Cause Court is satisfied that he is entitled to apply under section 41, be entitled to an order addressed to a bailiff of the Court directing him to give possession of the property to the applicant on such day as the Court thinks fit to name in such order

Order for possession

Explanation —If the occupant proves that the tenancy was created or permission granted by virtue of a title which determined previous to the date of the application, he shall be deemed to have shown cause within the meaning of this section

44. Any such order shall justify the bailiff to whom it is addressed in entering after the hour of six in the morning and before the hour of six in the afternoon upon the property named therein, with such assistants as he thinks necessary, and giving possession of such property to the applicant and no suit or prosecution shall be maintainable against any Judge or officer of the Small Cause Court by whom any such order as aforesaid was issued, or against any bailiff or other person by whom the same was executed, or by whom any such summons as aforesaid was served, for the issue, execution or service of any such order or summons, by reason only that the applicant was not entitled to the possession of the property

Such order to justify bailiff entering on property and giving possession
Bar to proceedings against Judge or officer for issuing, etc., order or summons

45. When the applicant, at the time of applying for any such order as aforesaid, was entitled to the possession of such property, neither he nor any person acting in his behalf shall be deemed, on account of any error, defect or irregularity in the mode of proceeding to obtain possession thereunder, to be a trespasser, but any person aggrieved may bring a suit for the recovery of compensation for any damage which he has sustained by reason of such error, defect or irregularity

Applicant, if entitled to possession, not to be deemed trespasser for any error in proceedings
Occupant may sue for compensation

when no such damage is proved, the suit shall be dismissed, and when such damage is proved but the amount of the compensation assessed by the Court does not exceed ten rupees, the Court shall award to the plaintiff no more costs than compensation, unless the Judge who tries the case certifies that in his opinion full costs should be awarded to the plaintiff

46. Nothing herein contained shall be deemed to protect any applicant obtaining possession of any property under this Chapter from a suit by any person deeming himself aggrieved thereby, when such applicant was not at the time of applying for such order as aforesaid entitled to the possession of such property.

Liability of applicant obtaining order when not entitled

And when the applicant was not, at the time of applying for any such order as aforesaid, entitled to the possession of such property, the applicant

Application for order in such case an act of trespass

¹ S. 43 has been virtually amended and supplemented in the City of Madras by the Madras City Tenants' Protection Act, 1922 (Mad. 3 of 1922)

(Chapter VII — Recovery of Possession of Immoveable Property
Chapter VIII — Distresses)

cation for such order, though no possession is taken thereunder, shall be deemed to be an act of trespass committed by the applicant against the occupant

Stay of proceedings on occupant giving security to bring suit against applicant

¹47. Whenever on an application being made under section 41 the occupant binds himself, with two sureties, in a bond for such amount as the Small Cause Court thinks reasonable, having regard to the value of the property and the probable costs of the suit next hereinafter mentioned, to institute without delay a suit in the High Court against the applicant for compensation for trespass and to pay all the costs of such suit in case he does not prosecute the same or in case judgment therein is given for the applicant, the Small Cause Court shall stay the proceedings on such application until such suit is disposed of

If the occupant obtains a decree in any such suit against the applicant, such decree shall supersede the order (if any) made under section 43

Nothing contained in section 22 shall apply to suits under this section

Proceedings to be regulated by Code of Civil Procedure

48. In all proceedings under this Chapter, the Small Cause Court shall, as far as may be and except as herein otherwise provided, follow the procedure prescribed for a Court of first instance by the ²Code of Civil XIV of 188 Procedure.

Recovery of possession no bar to suit to try title

³49. Recovery of the possession of any immoveable property under this Chapter shall be no bar to the institution of a suit in the High Court for trying the title thereto

CHAPTER VIII.

DISTRESSES

Local extent of Chapter Saving of certain rents

50. This Chapter extends to every place within the local limits of the ordinary original civil jurisdictions of the High Courts of Judicature at Fort William, Madras and Bombay But nothing contained in this Chapter applies—

(a) to any rent due to Government ,

(b) to any rent which has been due for more than twelve months before the application mentioned in section 53.

¹ S 47 has been amended in its application to Madras by s 2 (b) of the Presidency Small Cause Courts (Madras Amendment) Act, 1927 (Mad 3 of 1927)

² See now the Code of Civil Procedure, 1908 (Act 5 of 1908)

³ S 49 has been amended in its application to the Presidency town of Madras by the Presidency Small Cause Courts (Madras Amendment) Act, 1927 (Mad 3 of 1927), s 2 (b)

(Chapter VIII—Distresses)

¹[51. Four or more persons shall be appointed bailiffs and appraisers for the purposes of this Chapter]

Appointment
of bailiffs and
appraisers

52. The persons so appointed * * * shall be deemed to be public servants within the meaning of the Indian Penal Code

Appointees
to be public
servants

53. Any person claiming to be entitled to arrears of rent of any house or premises to which this Chapter extends, or his duly constituted attorney, may apply to any Judge of the Small Cause Court, or to the Registrar of the Small Cause Court, for such warrant as is hereinafter mentioned

Application
for distress
warrant

The application shall be supported by an affidavit or affirmation to the effect of the form (marked A) in the third schedule hereto annexed

54. The Judge or Registrar may thereupon issue a warrant under his hand and seal and returnable within six days, to the effect of the form (marked B) contained in the same schedule, addressed to any one of such bailiffs

Issue of
distress
warrant

The Judge or Registrar may at his discretion, upon personal examination of the person applying for such warrant, decline to issue the same

55. Every distress under this Chapter shall be made after sunrise and before sunset, and not at any other time

Time for
distress

56. The bailiff directed to make the distress may force open any stable, outhouse or other building, and may also enter any dwelling-house, the outer door of which may be open, and may break open the door of any room in such dwelling-house for the purpose of seizing property liable to be seized under this Chapter

What places
bailiff may
force open

Provided that he shall not enter or break open the door of any room appropriated for the zenáná or residence of women, which by the usage of the country is considered private

57. In pursuance of the warrant aforesaid the bailiff shall seize the moveable property found in or upon the house or premises mentioned in the warrant and belonging to the person from whom the rent is claimed (hereinafter called the debtor), or such part thereof as may, in the bailiff's judgment, be sufficient to cover the amount of the said rent, together with the costs of the said distress.

Property
which may
be seized

Provided that the bailiff shall not seize—

(a) things in actual use, or

¹ Subs by the A O 1937 for the original s 51 Bailiffs and appraisers being servants of the Crown, their remuneration and other conditions of service are now regulated by rules made, or deemed to be made, under the G of I Act, 1935 (26 Geo 5, Ch 2), s 241 (2) (b)

² The words "shall give security, to be approved by the said Judges, faithfully to discharge the duties of their office, and they" rep by the A. O. 1937.

(Chapter VIII—Distresses)

- (b) tools and implements not in use, where there is other moveable property in or upon the house or premises sufficient to cover such amount and costs, or
- (c) the debtor's necessary wearing apparel, or
- (d) goods in the custody of the law

Impounding
distress

58. The bailiff may impound or otherwise secure the property so seized in or on the house or premises chargeable with the rent

Inventory
Notice of in-
tended ap-
praisement
and sale

59. On seizing any property under section 57 the bailiff shall make an inventory of such property and shall give a notice in writing to the effect of the form (marked C) in the third schedule hereto annexed to the debtor, or to any other person upon his behalf in or upon the said house or premises

Copies of
inventory
and notice
to be filed
Application
to discharge
or suspend
warrant

The bailiff shall, as soon as may be, file in the Small Cause Court copies of the said inventory and notice

60. The debtor or any other person alleging himself to be the owner of any property seized under this Chapter, or the duly constituted attorney of such debtor or other person, may, at any time within five days from such seizure, apply to any Judge of the said Court to discharge or suspend the warrant, or to release a distrained article, and such Judge may discharge or suspend such warrant or release such article accordingly, upon such terms as he thinks just,

and any of the Judges of the said Court may in his discretion give reasonable time to the debtor to pay the rent due from him

Upon any such application, the costs attending it and attending the issue and execution of the warrant shall be in the discretion of the Judge, and shall be paid as he directs

Claim to
goods dis-
trained made
by a stranger

61. If any claim is made to, or in respect of, any property seized under this Chapter, or in respect of the proceeds or value thereof, by any person not being the debtor, the Registrar of the Small Cause Court, upon the application of the bailiff who seized the property, may issue a summons calling before the Court the claimant and the person who obtained the warrant

And thereupon any suit which may have been brought in the High Court in respect of such claim shall be stayed, and any Judge of the High Court, on proof of the issue of such summons and that the property was so distrained, may order the plaintiff to pay the costs of all proceedings in such suit after the issue of such summons

And a Judge of the Small Cause Court shall adjudicate upon such claim and make such order between the parties in respect thereof and of the costs of the proceedings as he thinks fit,

(Chapter VIII —Distresses)

and such order shall be enforced as if it were an order made in a suit brought in such Court

The procedure in Small Cause Courts in cases under this section shall conform, as far as may be, to the procedure in an ordinary suit in such Courts

62. In any case under section 60 or section 61 the Judge by whom the case is heard may award such compensation by way of damages to the applicant or claimant (as the case may be) as the Judge thinks fit, and may for that purpose make any inquiry he thinks necessary, and the order of the Judge awarding or refusing such compensation shall bar any suit for the recovery of compensation for any damage caused by the distress

Power to award compensation to debtor or claimant

63. In any case under section 60 or section 61, if the value of the subject-matter in dispute exceeds one thousand rupees, the applicant or claimant may apply to the High Court to transfer the case to itself, and the High Court, on being satisfied that it is expedient that the case should be disposed of by itself, may direct the case to be transferred accordingly, and may thereupon alter or set aside any order passed in the case by a Judge of the Small Cause Court and may make such order therein as the High Court thinks fit

Power to transfer to High Court cases involving more than one thousand rupees

Every application under this section shall be made within seven days from the date of the seizure of the subject-matter in dispute

In granting applications under this section, the High Court may impose such terms as to payment of, or giving security for, costs or otherwise as it thinks fit

The procedure in cases transferred under this section shall conform, as far as may be, to the procedure in suits before the High Court in the exercise of its ordinary original civil jurisdiction, and orders made under this section may be executed as if they were made in the exercise of such jurisdiction, and every such order awarding or refusing compensation shall bar any suit for the recovery of compensation for any damage caused by the distress which gave rise to the case wherein such order was made

64. In default of any order to the contrary by a Judge of the Small Cause Court or by the High Court, any two of the said bailiffs may, at the expiration of five days from a seizure of property under this Chapter, appraise the property so seized, and give the debtor notice in writing to the effect of the form (marked D) in the third schedule hereto annexed

Appraisement
Notice of sale

The bailiffs shall file in the Small Cause Court a copy of every notice given under this section.

65. In default of any such order to the contrary, the distrained property shall be sold on the day mentioned in such notice, and the said bailiffs shall, on realizing the proceeds, pay over the amount thereof to the Registrar of the Small Cause Court, and such amount shall be applied

Sale
Application of proceeds

(Chapter VIII.—Distresses. Chapter IX—References to High Court)

first in payment of the costs of the said distress and then in satisfaction of the debt, and the surplus, if any, shall be returned to the debtor

Provided that the debtor may direct that the sale shall take place in any other manner, first giving security for any extra costs thereby occasioned

Costs of
distresses

66. No costs of any distress under this Chapter shall be taken or demanded except those mentioned in the part (marked E) of the third schedule hereto annexed

1* * * * *

Account of
costs and
proceeds

67. The Registrar of the Small Cause Court shall keep a book in which all sums received as costs upon distresses made under this Chapter, and all sums paid as remuneration to the said bailiffs, and all contingent charges incurred in respect of such distresses, shall be duly entered.

He shall also enter in the said book all sums realised by sale of the property distrained and paid over to landlords under the provisions of this Chapter

Bar of dis-
tresses except
under this
Chapter

68. No distress shall be levied for arrears of rent except under the provisions of this Chapter,

Penalty for
making illegal
distresses

and any person, except a bailiff appointed under section 51, levying or attempting to levy any such distress, shall, on conviction before a Presidency Magistrate, be liable to be punished with fine which may extend to five hundred rupees and with imprisonment for a term which may extend to three months, in addition to any other liability he may have incurred by his proceedings.

CHAPTER IX.

REFERENCES TO HIGH

Reference
when com-
pulsory

²[69. (1) If two or more Judges of the Small Cause Court sit together in any suit, or in any proceeding under Chapter VII of this Act, and differ in their opinion as to any question of law or usage having the force of law or the construction of a document, which construction may affect the merits, or

if in any suit or in any such proceeding, in which the amount or value of the subject-matter exceeds five hundred rupees, any such question arises upon which the Court entertains reasonable doubt, and either party so requires,

the Small Cause Court shall draw up a statement of the facts of the case and the point on which there is a difference of opinion or on which

¹ The second paragraph, relating to the application of sums raised as costs towards payment of contingent charges and remuneration of bailiffs, was rep by the A O 1937

² Subs by the Presidency Small Cause Courts Act, 1906 (4 of 1906), s 4, for the original s 69

(Chapter IX—References to High Court Chapter X.—Fees and Costs)

XIV of 1882

doubt is entertained, and refer such statement with its own opinion on the point for the opinion of the High Court, and the provisions of sections 619 to 621 of the Code of Civil Procedure, shall, so far as they are applicable, be deemed to apply as if such reference had been made under section 617² of the said Code

(2) When the Small Cause Court refers any question for the opinion of the High Court as provided in sub-section (1), it shall either reserve judgment or give judgment contingent upon such opinion]

70. When judgment is given under section 69 contingent upon the opinion of the High Court, the party against whom such judgment is given shall at once furnish security, to be approved by the Small Cause Court, for the costs of the reference to the High Court and for the amount of such judgment

Security to be furnished on such reference by party against whom contingent judgment given

Provided that no security for the amount of such judgment shall be required in any case in which the Judge who tried the case has ordered such amount to be paid into Court, and the same has been paid accordingly

Unless such security as aforesaid is at once furnished, the party against whom such contingent judgment has been given shall be deemed to have submitted to the same.

If no such security given, party to be deemed to have submitted to judgment

CHAPTER X.

FEES AND COSTS

71. A fee not exceeding—

- (a) when the amount or value of the subject-matter does not exceed five hundred rupees—the sum of two annas in the rupee on such amount or value,
- (b) when the amount or value of the subject-matter exceeds five hundred rupees—the sum of sixty-two rupees eight annas, and one anna in the rupee on the excess of such amount or value over five hundred rupees,

Institution-fee

shall be paid on the plaint in every suit, and every application under section 41, and no such plaint or application shall be received until such fee has been paid

An additional fee of ten rupees shall be paid on the filing of every agreement under section 20

¹ See now the Code of Civil Procedure, 1908 (Act 5 of 1908), Sch I, Order XLVI, rules 3 to 5.

² See now rule 1, *ibid*

³ For modifications with which this section applies in Bengal, see the Bengal Court-fees (Amendment) Act, 1922 (Ben 4 of 1922), s 16

⁴ The words and figures "section 38 or" rep by the Presidency Small Cause Courts Act (1882) Amendment Act, 1896 (7 of 1896)

(Chapter X —Fees and Costs Chapter XI —Misconduct of Inferior Ministerial Officers)

Fees for
processes

72. The fees specified in the third and fourth columns of the fourth schedule hereto annexed shall be paid previous to the issue in any suit or in any proceeding under Chapter VII of this Act of the processes, to which the said columns respectively relate, by the persons on whose behalf such processes are issued, when the amount or value of the subject-matter exceeds the sum specified in the first column, but does not exceed the sum specified in the second column of the said schedule ¹

Repayment
of half fees
on settlement
before
hearing

²73 Whenever any such suit or proceeding is settled by agreement of the parties before the hearing, half the amount of all fees paid up to that time shall be repaid by the Small Cause Court to the parties by whom the same have been respectively paid

Fees and
costs of poor
persons

74. The Small Cause Court may, whenever it thinks fit, receive and register suits instituted, and applications under section 41 made, by poor persons, and may issue processes on behalf of such persons, without payment or on a part-payment of the fees mentioned in sections 71 and 72

Power to
vary fees

75. The ³[Provincial Government] may from time to time, by notification in the Official Gazette, vary the amount of the fees payable under sections 71 and 72

Provided that the amount of such fees shall in no case exceed the amount prescribed by the said sections

Expense of
employing
legal practi-
tioners

76. The expense of employing an advocate, vakil, attorney or other legal practitioner incurred by any party shall not be allowed as costs in any suit or in any proceeding under Chapter VII of this Act, in the Small Cause Court, in which suit or proceeding the amount or value of the subject-matter does not exceed twenty rupees, unless the Court is of opinion that the employment of such practitioner was under the circumstances reasonable

Sections 3,
5 and 25 of
Court-fees
Act, 1870,
saved

77. Nothing contained in this Chapter shall affect the provisions of sections 3, 5 and 25 of the Court-fees Act, 1870.

VII of 1870.

CHAPTER XI

MISCONDUCT OF INFERIOR MINISTERIAL OFFICERS

⁴78. [Power to fine officers] Rep by the A O 1937

Default of
bailiff or
other officer

79. If any clerk bailiff or other inferior ministerial officer of the Small Cause Court who is employed as such in the execution of any order

¹ For ss 72A, 72B and 72C in force in Calcutta only, see the Presidency Small Cause Courts (Ben Amendment) Act, 1932 (Ben 20 of 1932), s 3 and the Presidency Small Cause Courts (Ben Amendment) Act, 1934 (Ben 8 of 1934), s 3

² In its application to the Court of Small Causes of Calcutta, a different s has been subs for this section by Ben Act 8 of 1934, s 4

³ Subs by the A O 1937 for "L G"

⁴ This power is now regulated by rules made under the G of I Act, 1935 (26 Geo 5, Ch 2), s 211 (2) (b)

*(Chapter XI—Misconduct of Inferior Ministerial Officers**Chapter XII—Contempt of Court)*

or warrant, loses, by neglect, connivance or omission, an opportunity of in execution of order or warrant
 executing such order or warrant, he shall be liable, by order of the Chief Judge, on the application of the person injured by such neglect, connivance or omission, to pay such sum, not exceeding in any case the sum for which the said order or warrant was issued, as, in the opinion of the Chief Judge, represents the amount of the damage sustained by such person thereby

80. If any clerk, bailiff or other inferior ministerial officer of the Small Cause Court is charged with extortion or misconduct while acting under colour of its process, or with not duly paying or accounting for any money levied by him under its authority, the Court may inquire into such charge, and may make such order for the repayment or payment of any money so extorted, or of any money so levied as aforesaid, and of damages and costs, by such officer, as it thinks fit Extortion or default of officers

81. For the purposes of any inquiry under this Chapter, the Small Cause Court shall have all the powers of summoning and enforcing the attendance of witnesses and compelling the production of documents which it possesses in suits under this Act Court empowered to summon witnesses, etc

82. Any order under this Chapter for the payment or repayment of money may, in default of payment of the amount payable thereunder, be enforced by the person to whom such amount is payable as if the same were a decree of the Small Cause Court in his favour. Enforcement of order

CHAPTER XII.

CONTEMPT OF COURT

83 to 86. [*Procedure of Court in certain cases of contempt Record in such cases Procedure where Court considers that case should not be dealt with under section 83 Discharge of offender on submission or apology*] Rep by the Repealing and Amending Act, 1914 (10 of 1914), s 3 and Sch II

87. If any witness before the Small Cause Court refuses to answer such questions as are put to him, or to produce any document in his possession or power which the Court requires him to produce, and does not offer any reasonable excuse for such refusal, the Court may sentence him to simple imprisonment, or commit him to the custody of an officer of the Court, for any term not exceeding seven days, unless in the meantime such person consents to answer such questions or to produce such document, as the case may be, after which, in the event of his persisting in his refusal, he may be dealt with according to the provisions of section ¹[480 or section 482 of the Code of Criminal Procedure, 1898]. Imprisonment or committal of person refusing to answer or produce document.

of 1898.

¹ Subs by the Repealing and Amending Act, 1914 (10 of 1914), s 2 and Sch I, for "83 or s 85".

(Chapter XII—Contempt of Court Chapter XIII—Miscellaneous)

Appeal from
orders under
section 87

88. Any person deeming himself aggrieved by an order under
1* * * * section 87 may appeal to the High Court, and the provi-
sions of the ²[Code of Criminal Procedure, 1898], relating to appeals shall, ^V of 1898
so far as may be, apply to appeals under this section

CHAPTER XIII

MISCELLANEOUS

Persons by
whom pro-
cess may be
served

89. Notices to produce documents, summonses to witnesses, and all
other processes issued in the exercise of any jurisdiction conferred on the
Small Cause Court by this Act, except summonses to defendants and
writs of execution, may, if the Court by general or special order so directs,
be served by such persons as the Court, from time to time, appoints in
this behalf

Registers
and returns

90. The Small Cause Court shall keep such registers, books and
accounts and submit to the High Court such statements and returns as may,
subject to the approval of the ³[Provincial Government], be prescribed
by the High Court

Court to fur-
nish records,
etc, called
for by Pro-
vincial Gov-
ernment or
High Court

91. The Small Cause Court shall comply with such requisitions as
may, from time to time, be made by the ³[Provincial Government] or
High Court for records, returns and statements in such form and manner
as such Government or Court, as the case may be, thinks fit.

Holidays and
vacations

92 The Small Cause Court shall, at the commencement of each year,
draw up a list of holidays and vacations to be observed in the Court
and shall submit the same for the approval of the ³[Provincial
Government]

Such list, when it has received such approval, shall be published in
the ⁴[Official Gazette], and the said holidays and vacations shall be
observed accordingly

Certain per-
sons exempt
from arrest
by Court

93. The Governor General ⁵* * * , the Governors of ⁶[Madras],
⁷[Bombay and ⁸[West Bengal]], ⁹* * * * * and the Chief
Justices and Judges of the High Courts ~~established under the twenty-fourth~~

¹ The words and figures "s 83 or" rep by the Repealing and Amending Act, 1914 (10 of 1914), s 3 and Sch II

² Subs by s 2 and Sch I, *ibid*, for "Presidency Magistrates' Act, 1877"

³ Subs by the A O 1937 for "L G"

⁴ Subs by the A O 1937 for "local official Gazette"

⁵ The words "and Members of his Council" rep by the A O 1948

⁶ Subs by the A O 1948 for "Fort St George"

⁷ Subs by the Bengal, Bihar and Orissa and Assam Laws Act, 1912 (7 of 1912), s 7 and Sch E, for "and Bombay"

⁸ Subs by the A O 1948 for "Fort William in Bengal"

⁹ The words "and the Members of their respective Councils" rep by the A O 1937 The words "the Lieutenant-Governor of Bengal" rep by Act 7 of 1912, s 7 and Sch E

(Chapter XIII—Miscellaneous The First, Second and Third Schedules)

for part A states
~~and twenty-fifth of Victoria, Chapter 104,~~ shall not be liable to arrest by order of the Small Cause Court

94. No suit shall lie on any decree of the Small Cause Court

No suit to lie upon decree of Court

95. Any person ordered by the Small Cause Court to be imprisoned may be imprisoned in such place as the ²[Provincial Government] from time to time, appoints in this behalf

Place of imprisonment

96. If any person against whom any suit is brought for anything purporting to be done by him under this Act has, before the institution of the suit, tendered sufficient amends to the plaintiff, the plaintiff shall not recover

Tender in suit for anything done under Act

97. All prosecutions for anything purporting to be done under this Act must be commenced within three months after the offence was committed

Limitation of prosecutions

THE FIRST SCHEDULE—[Enactments repealed] Rep by the Repealing Act, 1938 (1 of 1938), s 2 and Sch

THE SECOND SCHEDULE—[Portions of Civil Procedure Code extending to Court] Rep by the Presidency Small Cause Courts Act, 1895 (1 of 1895), s 12

THE THIRD SCHEDULE

FORMS

A

[See section 53]

In the Small Cause Court for

A B (plaintiff),

Versus

C D (defendant),

A B, of , in the town of
 maketh oath (or affirms) and saith that C D , of , is
 justly indebted to in the sum of Rs , for arrears of rent
 of the house and premises No , situated at , in the town
 of , due for months, to wit from to
 , at the rate of Rs per mensem
 Sworn (or affirmed) before me the day of

188

Judge [or Registrar]

¹ The Indian High Courts Act, 1861, rep by the G of I Act, 1915

² Subs by the A O 1937 for "L G"

(The Thrd Schedule.)

THE THIRD SCHEDULE—contd

B.

[See section 54]

In the Small Cause Court for

FORM OF WARRANT

I hereby direct you to distrain the moveable property of C D, on the house and premises situate at No _____, in the town of _____, for the sum of _____Rs and the costs of the distress, according to the provisions of Chapter VIII of the Presidency Small Cause Courts Act, 1882. Dated _____ day of _____ 18__.

To E F, Bailiff and Appraiser

(Signed and sealed)

C

[See section 59]

In the Small Cause Court for

FORM OF INVENTORY AND NOTICE

(State particulars of property seized.)

Take notice that I have this day seized the moveable property contained in the above inventory for the sum of _____Rs, being the amount of _____ month's rent due to A B, at _____ last, and that unless you pay the amount thereof, together with the costs of this distress, within five days from the date hereof, or obtain an order from one of the Judges or the Registrar of the Small Cause Court to the contrary, the same will be appraised and sold pursuant to the provisions of Chapter VIII of the Presidency Small Cause Courts Act, 1882. Dated the _____ day of _____ 18__.

To C D

(Signed) E F.,
Bailiff and Appraiser

D.

[See section 64]

In the Small Cause Court for

Take notice that we have appraised the moveable property seized on the _____ day of _____, under the provisions of Chapter VIII of the Presidency Small Cause Courts Act, 1882, of which seizure and property a notice and inventory were duly served upon you [or upon _____ on your behalf, as the case may be] under date the _____, and that the said property will be sold on the _____ [two clear days at least after the date of the notice] at _____ pursuant to the provisions of the said Act. Dated this _____ day of _____ 18__.

To C. D

(Signed) E F,
G. H.,
Bailiffs and Appraisers

(The Third Schedule The Fourth Schedule)

THE THIRD SCHEDULE—*concl'd*

E.

[See section 66]

In the Small Cause Court for

SCALE OF FEES TO BE LEVIED IN DISTRAINTS FOR HOUSE-RENT

Sums sued for		Affidavit and warrant to distrain	Order to sell	Commission	TOTAL
Rs	Rs	Rs A P	Rs A P	Rs A P	Rs A P
1 and under 5	5	0 4 0	0 8 0	0 8 0	1 4 0
5 „ 10	10	0 8 0	0 8 0	1 0 0	2 0 0
10 „ 15	15	0 8 0	0 8 0	1 8 0	2 8 0
15 „ 20	20	0 8 0	1 0 0	2 0 0	3 8 0
20 „ 25	25	0 12 0	1 0 0	2 8 0	4 4 0
25 „ 30	30	1 0 0	1 0 0	3 0 0	5 0 0
30 „ 35	35	1 0 0	1 0 0	3 8 0	5 8 0
35 „ 40	40	1 0 0	1 8 0	4 0 0	6 8 0
40 „ 45	45	1 4 0	2 0 0	4 8 0	7 12 0
45 „ 50	50	1 8 0	2 0 0	5 0 0	8 8 0
50 „ 60	60	2 0 0	2 0 0	6 0 0	10 0 0
60 „ 80	80	2 8 0	2 8 0	6 8 0	11 8 0
80 to 100	100	3 0 0	3 0 0	7 0 0	13 0 0
Upwards of 100		3 0 0	3 0 0	7 per centum	

The above scale includes all expenses, except in suits where the tenant disputes the landlord's claim, and witnesses have to be sub-pœned, in which case each sub-pœna for sums under Rs 40, must be paid for at four annas each, and twelve annas above that amount, and also where peons are kept in charge of property distrained¹ [four annas per day must be paid per man]

THE FOURTH SCHEDULE

[See section 72]

FEES FOR SUMMONSES AND OTHER PROCESSES

When the amount or value of the subject-matter exceeds	But does not exceed	Fee for summonses	Fee for other processes
Rs	Rs	Rs A P	Rs A P
0	10	0 2 0	0 2 0
10	20	0 4 0	0 4 0
20	50	0 8 0	0 8 0
50	100	1 0 0	1 0 0
100	200	1 4 0	2 0 0
200	200	1 8 0	3 0 0

¹ In their application to the Court of Small Causes of Calcutta, these words have been subs by the words "such sum not exceeding eight annas per day as may be fixed from time to time by the Chief Judge must be paid per man" by the Presidency Small Cause Courts (Bengal Amendment) Act, 1932 (Ben. 20 of 1932)

(The Fourth Schedule)

Madras Forest (Validation)

[1882: Act XXI]

THE FOURTH SCHEDULE—*contd*

When the amount or value of the subject-matter exceeds	But does not exceed	Fee for summonses	Fee for other processes
Rs	Rs	Rs A P	Rs A P
300	400	1 12 0	4 0 0
400	500	2 0 0	5 0 0
500	600	2 4 0	6 0 0
600	700	2 8 0	7 0 0
700	800	2 12 0	8 0 0
800	900	3 0 0	9 0 0
900	1,000	3 4 0	10 0 0
1,000	1,100	3 6 0	10 8 0
1,100	1,200	3 8 0	11 0 0
1,200	1,300	3 10 0	11 8 0
1,300	1,400	3 12 0	12 0 0
1,400	1,500	3 14 0	12 8 0
1,500	1,600	4 0 0	13 0 0
1,600	1,700	4 2 0	13 8 0
1,700	1,800	4 4 0	14 0 0
1,800	1,900	4 6 0	14 8 0
1,900	2,000	4 8 0	15 0 0

1* * * * * * *

²[THE MADRAS FOREST (VALIDATION) ACT, 1882]

ACT No XXI OF 1882

[2nd November, 1882]

An Act to remove doubts regarding the Madras Forest Act, 1882.

Preamble

WHEREAS doubts have arisen whether the Madras Forest Act, 1882, is consistent with certain Acts of the ³[Central Legislature], and it is expedient to remove those doubts, It is hereby enacted as follows —

Mad Act V of 1882.

Enactments of the Central Legislature not to affect the Madras Forest Act

1. No enactment of the ~~Central Legislature~~ ^{central Act passed before the Commencement of the Constitution} shall affect, or shall be deemed to have at any time contained anything which would affect, the Madras Forest Act, 1882

Mad Act V of 1882.

¹ Sch V has been ins in the Act in its application to the Court of Small Causes of Calcutta by the Presidency Small Cause Courts (Bengal Amendment) Act, 1934 (Ben 8 of 1934)

² Short title given by the Amending Act, 1901 (11 of 1901), s 2 and Sch. I For Statement of Objects and Reasons, see Gazette of India, 1882, Pt V, p. 947, for Proceedings in Council, see *ibid*, 1882, Supplement, pp. 1463, 1493 and 1701.

³ Subs by the A O 1937 for "G. G in C".

BIKRAMA SINGH'S ESTATES ACT, 1883

ACT No X OF 1883

[18th July, 1883]

An Act to confirm and give effect to an award made by His Excellency the Viceroy and Governor General regarding certain matters in dispute between Sardar Bikrama Singh and the Kapurthhala State

WHEREAS Sardar Bikrama Singh, in recognition of his services, received Preamble from the British Government a grant of land in Oudh forming part of the Akuna Estate, and that land was, with his consent, settled in the name of the Raja of Kapurthhala,

And whereas the Raja of Kapurthhala took possession of that land, and Sardar Bikrama Singh was unable to recover possession thereof by process of law,

And whereas His Highness Raja Kurruck Singh of Kapurthhala and Sardar Bikrama Singh agreed that all claims preferred by Sardar Bikrama Singh to and on account of the said land should be referred to Sir Henry Davies, the then Chief Commissioner of Oudh, for decision as arbitrator, and those claims were referred to Sir Henry Davies accordingly,

And whereas Sir Henry Davies, on the sixth day of January 1871, delivered the following award, hereinafter called the first award (namely) —

“My award is that Raja Kurruck Singh of Kapurthhala, his heirs, executors or assigns, shall pay, within six months of the present date, in trust to the Chief Commissioner and to the Financial Commissioner of Oudh for the time being, and to the Commissioner of the Faizabad Division for the time being, jointly, on behalf of Sardar Bikrama Singh and the heirs male of his body (if any), the sum of five lakhs of rupees, to be invested, as early as practicable, by the aforementioned trustees in the purchase of land within the Province of Oudh. Such land, when purchased, shall be immediately delivered into the possession of Sardar Bikrama Singh, and shall be held by him and by the heirs male of his body, if any, in proprietary right. But in the event of Sardar Bikrama Singh dying without heirs male of his body, the proprietary right in all such land shall revert unconditionally to the Raja for the time being of Kapurthhala.

“If the Raja of Kapurthhala, his heirs, executors or assigns, fail to pay to the trustees the sum of five lakhs of rupees within six months from the present date, possession of the fifty-five hadbast circles detailed in the list hereto appended shall be given to Sardar Bikrama Singh, and all these hadbast circles shall be held by him as mortgagee until the whole sum of five lakhs of rupees shall have been paid to the trustees.

“Furthermore, the Raja of Kapurthhala, his heirs, executors or assigns, shall pay to Sardar Bikrama Singh, within one month from the present date, the sum of fifty thousand rupees in full liquidation of all claims to the mesne profits of past years. On the expiry of one month, such sum, if still unpaid, will bear interest at the rate of 12 per cent per annum.”

Addendum to award.

"To obviate doubts, I declare that, firstly, the words 'heirs male' mean only the sons of a woman belonging to the ahl-i-birádri of Sardar Bikrama Singh, secondly, Sardar Bikrama Singh shall, prior to the birth of an heir male of his body, have no power to mortgage or sell his interest in the estate purchased for him by the trustees without offering it in the first instance to the Raja of Kapurthhala for the time being

This addendum shall be read as part of my award",

And whereas doubts arose as to the meaning of that award, and, with the consent of the parties concerned, the matters in dispute were submitted to His Excellency the Viceroy and Governor General of India for decision,

And whereas in accordance with this submission, His Excellency the Viceroy and Governor General considered those matters, and on the third day of March 1881 made the following award, hereinafter called the second award (namely).—

"My award is that the estates already purchased and to be purchased shall (the aid of the Legislature being invoked if necessary) be so settled that they shall be the property of Bikrama Singh, subject to the following conditions and restrictions —

"*First*—No alienations of, or right (other than a right of tenancy subject to rent, or a right incidental to such a tenancy) created over, the estates or any part thereof by Bikrama Singh shall be valid for any period beyond his life

"*Secondly*—If Bikrama Singh at his death leaves a male heir of his body surviving him, the succession to the estates shall take place according to the proper law of inheritance, but the Estates shall not be chargeable with, or liable to be applied in satisfaction of, any debts incurred by Bikrama Singh, nor shall any person succeeding under this clause be liable, by reason of such succession, for any such debt.

"*Thirdly*—If Bikrama Singh at his death leaves no male heir of his body surviving him, the estates shall pass to the then Raja of Kapurthhala.

"*Fourthly*—If any lease or other contract fixing rent is granted to, or made with, a tenant by Bikrama Singh for a term, and Bikrama Singh dies before the expiration of such term, or if any such lease or contract is so granted or made in perpetuity, the rent of such tenant shall, notwithstanding anything contained in such lease or contract, be subject on the death of Bikrama Singh to enhancement from time to time on the same grounds, subject to the same conditions and according to the same procedure as if such tenant were a tenant with a right of occupancy; but if the rent is enhanced under this clause, the tenant may at any time thereafter rescind such contract",

And whereas it is expedient to confirm the second award and give effect to the same;

And whereas, in obedience to the first award, the sum of five lakhs of rupees was paid by the said Raja Kurruck Singh to the then Chief Commissioner and Financial Commissioner of Oudh and the then Com-

missioner of the Faizabad Division, and has been by them or by their successors in office invested in the lands specified in the schedule hereto annexed ;

And whereas it is expedient to settle the said lands in accordance with the terms of the second award ;

And whereas the first award, in so far as it has not already been executed, will be superseded by the second award and this Act, and it is therefore expedient to rescind the first award, It is hereby enacted as follows —

1. This Act may be called Bikrama Singh's Estates Act, 1883, and shall come into force at once

2. The first award is hereby rescinded, the trusts created thereunder shall be deemed to have been fully executed and determined, and the trustees thereunder shall be deemed to have been discharged

The second award is hereby confirmed

3. The lands specified in the Schedule hereto annexed shall vest in Sardar Bikrama Singh, and shall be deemed to be settled as required by the second award.

SCHEDULE

LANDS VESTED IN SARDAR BIKRAMA SINGH.

(See section 3)

District	Tahsil.	Pargana	Hadbast number	Name of Village
Sitapur . .	Sitapur . .	Sitapur . .	34	Arthalia
			23	Aihbanian
			37	Amypur
			627	Victoria
			463	Clarknagar
		Khairabad . .	25	Alsia
			75	Barabhar
			442	Aishbagh
			558	Mirnagar
			190	Pitampur
Rai Bareli . .	Misrikh . .	Maholi . .	136	Beadonpur.
			187	Pragpur
			410	Isanagar
			208	Tulshipur.
			341	Rahmatpur
			29	Bichia Abadi
			56	Baruahar
			59	Bandaie
			57	Bahadurpur
			208	Dariapur
	Dalmau . .	Misrikh . .	171	Rampur Kalan
			257	Rewari Pasia Khara
			314	Saidapur
			334	Firozpur
			366	Kanjas
			365	Kalehgaon with Chak.
			413	Lakhangaon with Chak
			480	Haibatpur Khurd
			477	Hilauli
			476	Hathnasa
	Rai Bareli . .	Khiron . .	8	Arendhi.
			452	Malpur
			28	Balehpur

Short title
Commence-
ment

Rescission of
first award,
and determi-
nation of
trust created
thereby

Confirmation
of second
award

Lands in
schedule to
be deemed
settled in
accordance
with second
award

THE LAND IMPROVEMENT LOANS ACT, 1883

ACT No XIX OF 1883 ¹

[12th October, 1883]

An Act to consolidate and amend the law relating to loans of money by the Government for agricultural improvements

WHEREAS it is expedient to consolidate and amend the law relating to loans of money by the Government for agricultural improvements, It is hereby enacted as follows —

Short title

1. (1) This Act may be called the Land Improvement Loans Act, 1883

Local extent.
Commence-
ments

part A state
part C state

(2) It extends to ^{whole} ~~all the Provinces of India~~ ^{except part B state} but shall not come into force in any part of ~~the Provinces~~ until such date as the ^{Provincial} ~~Government~~ * * * * * may, by notification in the ^{Official} ~~Official~~ Gazette], appoint in this behalf ⁷

Acts XXVI
of 1871 and
XXI of 1876
repealed

2. (1) The Land Improvement Act, 1871, and Act XXI of 1876 (*An Act to amend the Land Improvement Act, 1871*), shall, except as regards the recovery of advances made before this Act comes into force and costs incurred by the Government in respect of such advances, be repealed

(2) When in any Act, Regulation or Notification passed or issued before this Act comes into force, reference is made to either of those Acts, the reference shall, so far as may be practicable, be read as applying to this Act or the corresponding part of this Act

"Collector"
defined

state

3. In this Act, "Collector" ³ means the Collector of land-revenue of a district, or the Deputy Commissioner, or any officer empowered by the ^{state} ~~Provincial~~ Government] by name or by virtue of his office to discharge the functions of a Collector under this Act.

¹ For the Statement of Objects and Reasons, see Gazette of India, 1882, Pt V, p 954, for Report of the Select Committee, see *ibid*, 1883, Supplement, p. 1296; for Proceedings in Council, see *ibid*, 1882, Supplement, pp 1494 and 1697, *ibid*, 1883, Supplement, p 2071

Instruments executed by persons taking loans, or by their sureties, as security for the repayment of such loans, are exempted from stamp-duty—see the Indian Stamp Act, 1899 (2 of 1899), Sch I, Art 40, exemption (1), and notification under s 9.

² Subs by the A O 1948 for "the whole of British India"

³ Subs by the A O 1948 for "British India"

⁴ Subs by the A O 1937 for "L G".

⁵ The words "with the previous sanction of the G. G. in C" rep by the Land Improvement and Agriculturists' Loans (Amendment) Act, 1906 (8 of 1906), s 2.

⁶ Subs by the A O 1937 for "local official Gazette".

⁷ This Act has been declared to be in force in—

(1) the Sonthal Parganas by the Sonthal Parganas Settlement Regulation (3 of 1872), s 3;

(2) the Khondmals District by the Khondmals Laws Regulation, 1936 (4 of 1936), s 3 and Sch; and

(3) the Angul District by the Angul Laws Regulation, 1936 (5 of 1936), s. 3 and Sch

⁸ Cf the definition in s. 3 (10) of the General Clauses Act, 1897 (10 of 1897).

4. (1) Subject to such rules as may be made under section 10, loans may be granted under this Act, by such officer as, may, from time to time, be empowered in this behalf by the ¹[~~Provincial~~ ^{State} Government], for the purpose of making any improvement, to any person having a right to make that improvement, or, with the consent of that person, to any other person

Purposes for which loans may be granted under this Act

(2) "Improvement" means any work which adds to the letting value of land, and includes the following, namely —

- (a) the construction of wells, tanks and other works for the storage, supply or distribution of water for the purposes of agriculture, or for the use of men and cattle employed in agriculture,
- (b) the preparation of land for irrigation,
- (c) the drainage, reclamation from rivers or other waters, or protection from floods or from erosion or other damage by water, of land used for agricultural purposes or waste-land which is culturable,
- (d) the reclamation, clearance, enclosure or permanent improvement of land for agricultural purposes ;
- (e) the renewal or reconstruction of any of the foregoing works, or alterations therein or additions thereto, and
- (f) such other works as the ¹[~~Provincial~~ ^{State} Government] ²* * * * may, from time to time, by notification in the ³[Official Gazette], declare to be improvements for the purposes of this Act

5. (1) When an application for a loan is made under this Act, the officer to whom the application is made may, if it is, in his opinion, expedient that public notice be given of the application, publish a notice, in such manner as the ¹[~~Provincial~~ ^{State} Government] may, from time to time, direct, calling upon all persons objecting to the loan to appear before him at a time and place fixed therein and submit their objections

Mode of dealing with applications for loans

(2) The officer shall consider every objection submitted under subsection (1), and make an order in writing either admitting or overruling it

Provided that, when the question raised by an objection is, in the opinion of the officer, one of such a nature that it cannot be satisfactorily decided except by a Civil Court, he shall postpone his proceedings on the application until the question has been so decided

6. (1) Every loan granted under this Act shall be made repayable by instalments (in the form of an annuity or otherwise), within such period from the date of the actual advance of the loan, or, when the loan

Period for repayment of loans

¹ Subs by the A O 1937 for "L G"

² The words "with the previous sanction of the G G in C" rep. by the Land Improvement and Agriculturists' Loans (Amendment) Act, 1906 (8 of 1906), s 2.

³ Subs by the A O 1937 for "local official Gazette".

is advanced in instalments, ¹[from the date of the advance of the last instalment actually paid] as may, from time to time, be fixed by the rules made under this Act

(2) The period fixed as aforesaid shall not ordinarily exceed thirty-five years.

(3) The ²~~Provincial~~ ^{State} Government] * * * * *, in making * * * the rules fixing the period, shall, in considering whether the period should extend to thirty-five years, or whether it should extend beyond thirty-five years, have regard to the durability of the work for the purpose of which the loan is granted, and to the expediency of the cost of the work being paid by the generation of persons who will immediately benefit by the work.

Recovery of
loans.

7. (1) Subject to such rules as may be made under section 10, all loans granted under this Act, all interest (if any) chargeable thereon, and costs (if any) incurred in making the same, shall, when they become due, be recoverable by the Collector in all or any of the following modes, namely .—

- (a) from the borrower—as if they were arrears of land-revenue due by him ,
- (b) from his surety (if any)—as if they were arrears of land-revenue due by him ,
- (c) out of the land for the benefit of which the loan has been granted—as if they were arrears of land-revenue due in respect of that land ,
- (d) out of the property comprised in the collateral security (if any)—according to the procedure for the realization of land-revenue by the sale of immoveable property other than the land on which that revenue is due.

Provided that no proceeding in respect of any land under clause (c) shall affect any interest in that land which existed before the date of the order granting the loan, other than the interest of the borrower, and of mortgagees of, or persons having charges on, that interest, and, where the loan is granted under section 4 with the consent of another person, the interest of that person, and of mortgagees of, or persons having charges on, that interest.

(2) When any sum due on account of any such loan, interest or costs is paid to the Collector by a surety or an owner of property comprised in any collateral security, or is recovered under sub-section (1) by the Collector from a surety or out of any such property, the Collector shall, on the

¹ Subs by the Land Improvement Loans (Amendment) Act, 1899 (18 of 1899), s 2, for "from the date of the actual advance of the last instalment,"

² Subs by the A O 1937 for "L G"

³ The words "and G G in C" rep by the Land Improvement and Agriculturists' Loans (Amendment) Act, 1906 (8 of 1906), s 3

⁴ The words "and sanctioning" rep by s 3, *ibid*.

application of the surety or the owner of that property (as the case may be), recover that sum on his behalf from the borrower, or out of the land for the benefit of which the loan has been granted, in manner provided by sub-section (1)

(3) It shall be in the discretion of a Collector acting under this section to determine the order in which he will resort to the various modes of recovery permitted by it

8. A written order under the hand of an officer empowered to make loans under this Act granting a loan to, or with the consent of, a person mentioned therein, for the purpose of carrying out a work described therein, for the benefit of land specified therein, shall, for the purposes of this Act, be conclusive evidence—

- (a) that the work described is an improvement within the meaning of this Act ;
- (b) that the person mentioned had at the date of the order a right to make such an improvement , and
- (c) that the improvement is one benefiting the land specified

9. When a loan is made under this Act to the members of a village community or to any other persons on such terms that all of them are jointly and severally bound to the Government for the payment of the whole amount payable in respect thereof, and a statement showing the portion of that amount which as among themselves each is bound to contribute is entered upon the order granting the loan and is signed by each of them and by the officer making the order, that statement shall be conclusive evidence of the portion of that amount which as among themselves each of those persons is bound to contribute

10. The ¹[Provincial Government] * * * * may, from time to time, by notification in the ²[Official Gazette], make rules consistent with this Act to provide for the following matters, namely —

- (a) the manner of making applications for loans ,
- (b) the officers by whom loans may be granted ;
- (c) the manner of conducting inquiries relative to applications for loans, and the powers to be exercised by officers conducting those inquiries ,
- (d) the nature of the security to be taken for the due application and repayment of the money, the rate of interest at which, and the conditions under which, loans may be granted, and the manner and time of granting loans ,
- (e) the inspection of works for which loans have been granted ,

¹ Subs by the A O 1937 for "L G".

² The words "subject to the control of the G G in C" rep by the Decentralization Act, 1914 (4 of 1914), s 2 and Sch, Part I. The words "subject to the control" had been subs for "with the previous sanction" by the Land Improvement and Agriculturists' Loans (Amendment) Act, 1906 (8 of 1906), s 4

³ Subs. by the A O. 1937 for "local official Gazette".

Punjab District Boards

[1883 : Act XX.

- (f) the instalments by which, and the mode in which, loans, the interest to be charged on them and the costs incurred in the making thereof, shall be paid ,
- (g) the manner of keeping and auditing the accounts of the expenditure of loans and of the payments made in respect of the same , and
- (h) all other matters pertaining to the working of the Act.

Exemption
of improve-
ments from
assessment
to land-
revenue

11. When land is improved with the aid of a loan granted under this Act, the increase in value derived from the improvement shall not be taken into account in revising the assessment of land-revenue on the land

Provided as follows —

(1) where the improvement consists of the reclamation of waste-land, or of the irrigation of land assessed at unirrigated rates, the increase may be so taken into account after the expiration of such period as may be fixed by rules to be framed by the ^{State} ~~Provincial~~ Government] ² * * * * *

(2) nothing in this section shall entitle any person to call in question any assessment of land-revenue otherwise than as it might have been called in question if this Act had not been passed

Certain
powers of
Provincial
Government
to be exercise-
able by Board
of Revenue or
Financial
Commissioner

³[12. The powers conferred on a ^{State} ~~Provincial~~ Government] by sections 4 (1), 5 (1) and 10 may, in a ^{State} ~~province~~ for which there is a Board of Revenue or a Financial Commissioner, be exercised in the like manner and subject to the like conditions by such Board or Financial Commissioner, as the case may be. Provided that rules made by a Board of Revenue or Financial Commissioner shall be subject to the control of the ^{State} ~~Provincial~~ Government]]

THE PUNJAB DISTRICT BOARDS ACT, 1883

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¹ Subs by the A O 1937 for " L G "

² The words " with the approval of the G^o G in C " rep by the Land Improvement and Agriculturists' Loans (Amendment) Act, 1906 (8 of 1906), s 5

³ S 12 ins by the Decentralization Act, 1914 (4 of 1914), s 2 and Sch, Pt I The original s 12 had been rep by the Indian Registration Act, 1908 (16 of 1908) The application of this section has been barred in U P by the U P Board of Revenue Act, 1922 (U P 12 of 1922)

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SUPPLEMENTAL PROVISIONS AS TO TAXATION

- 70 Recovery of rates
- 71 Local rate or tax how to be assessed and collected
- 72. Appeals
- 73 Instalments of rates and taxes
- 74 Power of Provincial Government to exempt from taxation
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- 76 Suits relating to rates and taxes under this Act cognizable by Courts having cognizance of suits for rent
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CHAPTER V

[*Repealed*]

(Chapter I—Preliminary)

ACT No XX OF 1883¹

[12th October, 1883]

An Act to make better provision for local self-government in the districts of ²[East Punjab]

WHEREAS it is expedient to amend the law in force in ³[East Punjab] for the levy and expenditure of rates on land, and

Whereas it is also expedient to provide for the constitution of district boards and local boards in those territories, and to define and regulate the powers to be exercised by those boards,

It is hereby enacted as follows—

CHAPTER I

PRELIMINARY

Short title

1. (1) This Act may be called the Punjab District Boards Act, 1883 ;

Extent

(2) ⁴[It extends to the ~~Province~~ ^{State} of East Punjab and Delhi], and

Commencement

(3) It shall come into force in each district on such date as the ⁵[~~Pro-~~vincial Government], by notification, directs

Repeal of Act V of 1878.

2. From the date on which this Act comes into force in any district, the Punjab Local Rates Act, 1878, shall be repealed throughout that district. But all rates imposed, sums credited to the ⁶[~~Provincial~~ ^{State} Government] and notifications published under that Act, shall, so far as may be, be deemed to have been respectively imposed, credited and published under this Act

Definitions

3. In this Act, unless there is something repugnant in the subject or context,—

(1) “land” means land assessed to the land-revenue, and includes land whereof the land-revenue has been wholly, or in part, released, compounded for, redeemed or assigned

(2) “land-revenue” includes *turn* or grazing-dues levied for grazing on ⁷[Crown lands] under section 48 of the Punjab Laws Act, 1872.

IV of 187

¹ For Statement of Objects and Reasons, see Gazette of India, 1883, Pt V, p. 464, for Proceedings in Council, see *ibid.*, Supplement, pp 1161 and 2087

² Subs by the A O 1948 for “the Punjab”

³ Subs by the A O 1948 for “the territories administered by the Lieutenant-Governor of the Punjab”

⁴ Subs by the A O 1948 for the original words as amended by the A. O 1937

⁵ Subs by the A O 1937 for “L G”

⁶ Subs by the A O 1937 for “Govt lands”

(Chapter I —Preliminary Chapter II —The Local Rate on Land)

(3) " land-holder " means any person responsible for the payment of the land-revenue, if any, assessed on land It also includes the proprietor of land the land-revenue of which has been wholly, or in part, released, compounded for, redeemed or assigned

(4) " annual 'value " means—

- (a) double the land-revenue for the time being assessed on any land, whether the assessment is leviable or not , or
- (b) where the land revenue has been permanently assessed, or has been wholly or in part compounded for or redeemed, double the amount which, but for such permanent assessment, composition or redemption, would have been leviable , or
- (c) where no land-revenue has been assessed, double the amount which would have been assessed if the average village rate had been applied

Provided that, in any tract in which, under the settlement for the time being in force, the improvement of the land due to canal irrigation has been excluded from account in assessing the land-revenue, and a rate has been imposed in respect of such improvement, that rate shall be added to the land-revenue for the purpose of computing the annual value

(5) " financial year " means the year commencing on the first day of April

(6) " prescribed day " means such day as the ^{state} ~~Provincial~~ Government] may, from time to time, prescribe

(7) " notification " means a notification published in the Official Gazette ,

(8) " notified " means notified in the Official Gazette

(9) " Deputy Commissioner " means the Deputy Commissioner of a district, and includes any officer specially appointed by the ^{state} ~~Provincial~~ Government] to perform the functions of a Deputy Commissioner under this Act

4. [Powers exercisable from time to time.] Rep by the Punjab District Boards (Amendment) Act, 1922 (Punjab XI of 1922), s 3

CHAPTER II

THE LOCAL RATE ON LAND

5. (1) All land shall be subject to the payment of a rate, to be called ^{The local} the local rate, not exceeding ^{rate} ²[twelve and not less than] ³[ten pies] for every rupee of its annual value

¹ Subs by the A O 1937 for " L G "

² Ins by the Punjab District Boards (Amendment) Act, 1922 (Punjab 11 of 1922), s 4

³ Subs by the Punjab District Boards Act Amendment Act, 1906 (Punjab 2 of 1906), s 2, for " one anna "

(Chapter II—The Local Rate on Land)

(2) The proportion which the local rate shall bear to the annual value of land shall, except as provided in sub-section (3), be fixed for each district by the ¹[Provincial Government] by notification

(3) The ¹[Provincial Government] may, by notification, delegate to the district board, subject to such restrictions or conditions as it thinks fit, its powers under sub-section (2), and may, by notification, cancel or vary any such notification

Road, school and post cesses to merge in the rate

6. From such date as may be notified in respect of each district by the ¹[Provincial Government], all authorized rates and cesses for the maintenance of roads, schools and the district-post shall merge in and become part of the local rate, and no rate or cess other than the local rate shall be thereafter leviable for those purposes

Liability for local rate

7. The land-holder shall be liable for the local rate subject to the following provisos, namely—

(1) where the land-holder pays the land-revenue in kind to any assignee of revenue or any village-headman, the assignee of revenue or village-headman shall be liable for the payment of the local rate instead of the land-holder, and no demand shall be made by any such assignee or village-headman on the land-holder in respect of the payment of the rate, and

(2) where the Government has, under any lease current at the time when this Act comes into force, paid the local rate on *term*, it shall continue to pay the rate during the currency of the lease

Power to recover a share of the rate from occupancy-tenant

8. When a local rate is payable by a land-holder in respect of lands held by a tenant with a right of occupancy holding at a favourable rent, the land-holder may realize from the tenant a share of the rate, bearing the same proportion to the whole rate as the excess of the annual value over the rent paid by the tenant bears to half the annual value

Appropriation of proceeds of local rates

²[9. The proceeds of the local rate levied in each district shall, except as provided in section 68, be allotted to the district board established for that district under this Act

Provided that the ¹~~Provincial~~^{State} Government may direct that the whole or any portion of the net proceeds of the local rate levied within the limits of any municipality, ³[small town (as defined in the Punjab Small Towns Act, 1921)], notified area or military cantonment after deducting the expenses of collection, shall be carried to the credit of the municipal or town fund, or made available for the purpose of public improvement in the cantonment or for carrying out therein any rules made under ⁴[section 280 of the Cantonments Act, 1924]]

Punjab
II of 1922.

II of 1924

¹ Subs by the A O 1937 for "L G"

² Subs by the Punjab District Boards Act (Amendment) Act, 1906 (Punjab 2 of 1906), s 3, for the original section

³ Ins by the Punjab District Boards (Amendment) Act, 1925 (Punjab 6 of 1925), s 2

⁴ Subs by Punjab Act 6 of 1925, s 2, for "s 25 of the Cantonments Act, 1889"

(Chapter III —District and Local Boards)

CHAPTER III

DISTRICT AND LOCAL BOARDS

A —Constitution of District and Local Boards

10 (1) The ¹[~~Provincial~~ Government] shall, by notification, establish a district board for each district Establishment of district and local boards

(2) The ¹[~~Provincial~~ Government] may, by notification, establish a local board or local boards within the limits of any district, and may cancel or vary any such notification

(3) A district board shall have authority throughout the district for which it is established, and a local board shall have authority throughout such portion of the district in which it is established, as the ¹[~~Provincial~~ Government] may, by notification, direct

Provided that a board shall not have authority over any portion of a district which is for the time being included in a military cantonment, ²[small town as defined in the Punjab Small Towns Act, 1921], or a municipality

Punjab
of 1922

11. (1) A district board or local board shall consist of such number of members, not less than six, as the ¹[~~Provincial~~ Government] may fix in this behalf Number and appointment or election of members

(2) The members may be appointed by the ¹[~~Provincial~~ Government] either by name or by official designation, or may be elected in accordance with rules made by the ¹[~~Provincial~~ Government] under this Act, or some may be appointed and some elected, as the ¹[~~Provincial~~ Government] directs

Provided that—

(a) when the ¹[~~Provincial~~ Government] has directed that all or any proportion of the members shall be elected, it shall not thereafter direct that they shall be appointed, unless a majority of the electors declare that they so desire, * * *

⁴[(b) of the appointed members not more than one-half or six, whichever is less, shall be ⁵[whole-time salaried servants] ⁶[of the Govt. Crown],] and

¹ Subs by the A O 1937 for "L G"

² Ins by the Punjab District Boards (Amendment) Act, 1922 (Punjab 11 of 1922), s 5

³ The words "or the G G in C, for some reason affecting the public interests, sanctions the direction" rep by the Devolution Act, 1920 (38 of 1920), s 2 and Sch I

⁴ Subs by the Punjab District Boards (Amendment) Act, 1922 (Punjab 11 of 1922), s 6, for the original clause

⁵ Subs by the Punjab District Boards (Amendment) Act, 1925 (Punjab 6 of 1925), s 3, for "salaried officers"

⁶ Subs by the A O 1937 for "of Govt"

(Chapter III—District and Local Boards)

- (c) not less than one-half of the members of the board shall be land-holders in the district

(3) When, under a direction issued under sub-section (2), any places on a board are required to be filled by election, and a sufficient number of members is not elected, the ¹[~~Provincial~~ Government] may fill those places by appointment

Oath of
allegiance

²[11A. Notwithstanding anything contained in the Indian Oaths Act, X of 1873, every person who is elected or appointed to be a member of the district board shall before taking his seat take or make, at a meeting of the board, an oath or affirmation of his allegiance to the Crown in the following form, namely —

I, *A B*, having been elected/appointed a member of this board, do solemnly swear (or affirm) that I will be faithful and bear true allegiance to His Majesty the King Emperor of India, His heirs and successors, and that I will faithfully discharge the duty upon which I am about to enter

Provided that—

- (a) if any such person omits or refuses to take or make such oath or affirmation, his election, or appointment, as the case may be, shall be deemed to be invalid;
- (b) in the case of such invalid election the person, if any, who obtained the next largest number of votes from amongst those who failed to secure election, shall be deemed to have been duly elected, or if the election was uncontested a fresh election shall be held, or in the case of such invalid appointment the ¹[~~Provincial~~ Government] shall appoint another person in the manner prescribed in sub-section (2) of section 11;
- (c) no person whose election or appointment has been deemed to be invalid under this section shall be eligible for election or appointment to any District Board for a period of two years from the date on which he ought to have taken or made such oath or affirmation]

Term of office
of members

12. (1) A member of a district board or local board, when appointed by virtue of an office, shall, unless and until the ¹[~~Provincial~~ Government] otherwise directs, continue to be a member of the board while he continues to hold that office

(2) The term of office of all other elected and appointed members, respectively, of a district board or local board shall be fixed by the ¹[~~Provincial~~ Government] by rules made under this Act, and may be so fixed as to provide for the retirement of members by rotation, but shall not exceed three years

¹ Subs. by the A O 1937 for "L G"

² Ins by Punjab Act II of 1922, s 7

(Chapter III—District and Local Boards)

(3) An outgoing member shall, if otherwise qualified, be again eligible for election or appointment

¹[(4) Notwithstanding anything contained in sub-section (2) or in any rules made by the ²[Provincial Government] thereunder, an outgoing member shall, unless the ²[Provincial Government] otherwise directs, continue in office until the election or appointment of his successor is notified]

13 A member of a local board or of a district board may resign by notifying in writing his intention to do so to the ³[Commissioner], and, on the acceptance by the ³[Commissioner] of such resignation, the member shall be deemed to have vacated his office Resignation of members

14. The ²[Provincial Government] may remove any member of a district board or local board— Powers of the Provincial Government as to removal of members.

(a) if he refuses to act, or becomes incapable of acting, or is declared insolvent, or is convicted of any such offence, or subjected by a Criminal Court to any such order, as implies, in the opinion of the ²[Provincial Government], a defect of character which unfits him to be a member,

(b) if he has been declared by notification to be disqualified for employment in the public service,

(c) if he, being a member of a local board, without an excuse sufficient in the opinion of the ²[Provincial Government], neglects for more than three consecutive months to be present at the meetings of that board, or, being a member of the district board, without such sufficient excuse, neglects for more than six consecutive months to be present at the meetings of that board,

(d) if his continuance in office is, in the opinion of the ²[Provincial Government], dangerous to the public peace or order, or

(e) when he is a salaried officer ⁴[of the Crown], if his continuance in office is, in the opinion of the ²[Provincial Government], unnecessary or undesirable

⁵[14A. Notwithstanding anything in the foregoing sections of this Chapter or in the rules made thereunder, the ²[Provincial Government] may, at any time, for any reason which it may deem to affect the public interests or at the request of the majority of electors, by notification direct that the

Power of the Provincial Government as to removal of a specified member

¹ Ins by the Punjab District Boards (Amendment) Act, 1919 (Punjab 3 of 1919), s 2

² Subs by the A O 1937 for "L G"

³ Subs by the Decentralization Act, 1914 (4 of 1914), s 2 and Sch, Pt I, for "L G"

⁴ Subs by the A O 1937 for "of the Govt"

⁵ Ins by the Punjab District Boards (Amendment) Act, 1919 (Punjab 3 of 1919), s 3

(Chapter III —District and Local Boards)

seat of any specified member, whether elected or appointed, shall be vacated on a given date, and in such case, such seat shall be vacated accordingly]

Filling of casual vacancies

15. (1) When the place of an elected member of a local board or district board becomes vacant by the resignation or removal of the member or by his death, a new member shall be chosen in accordance with the rules made by the ¹[Provincial Government] under this Act to fill the place

Provided that the ¹[Provincial Government] may direct in any such case that the vacancy shall be left unfilled

²[Provided further that when an elected member's seat has been vacated under the provisions of section 14A, the Provincial Government may, if it thinks fit, fill his place by appointment]

(2) When the place of a member of a local board or district board appointed by name becomes vacant as aforesaid, the ¹[Provincial Government] may, if it thinks fit, appoint a new member to fill the place

(3) A person chosen or appointed under this section to fill a casual vacancy shall hold office until the person whose place he fills would regularly have gone out of office, and shall then go out of office, but shall be again eligible for election or appointment

Incorporation of district boards

16. Every district board shall be a body corporate by the name of the district board of its district, and shall have perpetual succession and a common seal, with power to acquire and hold property, both moveable and immoveable, and, subject to any rules made by the ¹[Provincial Government] under this Act, to transfer any such property held by it, and to contract and do all other things necessary for the purposes of its constitution, and may sue and be sued in its corporate name

Time for district and local boards coming into existence
Chairman

17 The several district boards and local boards constituted under this Act shall come into existence at such time as the ¹[Provincial Government] may, by notification, fix in this behalf

18. (1) A member of every district board or local board shall be elected or appointed to be chairman of the board, and shall hold office for such term, not exceeding three years, as the ¹[Provincial Government] may, by a rule made under this Act, fix

(2) The ¹[Provincial Government] shall determine, as regards each board or as regards any class of boards, whether the chairman shall be a person appointed by virtue of his office or by name or be elected

Vice-Chairman

19. (1) A district board or local board may elect one ²[or two] of its members ³[not being ⁴[whole-time salaried servants] of Government] to

¹ Subs by the A O 1937 for "L G"

² Ins by the Punjab District Boards (East Punjab Amendment) Ordinance, 1948 (East Punjab Ordinance 6 of 1948), s 2

³ Ins by the Punjab District Boards (Amendment) Act, 1922 (Punjab 11 of 1922), s 8

⁴ Subs by the Punjab District Boards (Amendment) Act, 1925 (Punjab 6 of 1925), s 3, for "salaried officers"

(Chapter III —District and Local Boards)

be vice-chairman, ¹[or vice-chairmen, and when two vice-chairmen are elected on the same date, shall declare which of them shall be the senior]

(2) A vice-chairman so elected shall hold office for such term as the board may, by rule, fix

²[19A. Notwithstanding anything contained in this Act, every district board may, with the previous sanction of the ^{Power to delegate} ~~Provincial Government~~, by resolution delegate to the chairman, vice-chairman, secretary, civil surgeon, medical officer of health or any officer of the department of Public Instruction all or any of the powers conferred upon the board under sections 20 and 27]

³[19B. (1) In cases of emergency the chairman or, in his absence or during the vacancy of his office, a vice-chairman may direct the execution of any work or the doing of any act which the district board is empowered to execute or do, and the immediate execution or doing of which is, in his opinion, necessary for the service or safety of the public, and may direct that the expense of executing such work or doing such act shall be paid from the district fund ^{Extraordinary powers of chairman, vice-chairman and Deputy Commissioner in cases of emergency}

Provided that every direction given under this section shall be reported to the next following meeting of the board

(2) The chairman or vice-chairman shall not act under this section in contravention of any order of the board

(3) The chairman or, in his absence or during the vacancy of his office, a vice-chairman may prohibit, until the matter has been considered by the board, the doing of any act which is in his opinion undesirable in the public interest provided that the act is one which the board has power to prohibit

(4) If the chairman or vice-chairman, as the case may be, omits to take action under sub-section (1) or sub-section (3), the Deputy Commissioner may by written notice require him to do so, and if he refuses or fails to take such action, the Deputy Commissioner may exercise the powers described and limited in sub-sections (1) and (3)

(5) If the expense of executing the work or of doing the act as described in the sub-section (1) is not paid as directed, the chairman, vice-chairman or Deputy Commissioner, as the case may be, may make an order directing the person having the custody of the balance of the district fund to pay the expense or so much thereof as is, from time to time, possible from that balance in priority to all other charges against the same

(6) No direction given under this section shall be questioned in any court on the ground that the case was not one of emergency]

¹ Ins by the Punjab District Boards (Amendment) Act, 1922 (Punjab 11 of 1922), s 8

² Ins by Punjab Act 11 of 1922, s 9

³ Subs by the A. O 1937 for "L G "

(Chapter III—District and Local Boards)

Officers, servants and members to be public servants

¹[19C. Every officer or servant employed by a district board whether for the whole or part of his time and drawing remuneration of not less than thirty rupees per mensem, and every member of a board shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code XLV of Code]

B—Duties of District and Local Boards

Duties of district board

20. (1) The following matters shall, subject to such exceptions and conditions as the ²[Provincial Government] may make and impose, be under the control and administration of each district board within the area subject to its authority—

- (a) the management of all property vested in the district board ,
- (b) the construction, repair and maintenance of public roads and other means of communication ,
- (c) the establishment, management, maintenance and visiting of public hospitals, dispensaries, sarais and schools, and the construction and repair of all buildings connected with these institutions ,
- (d) the training of teachers and the establishment of scholarships ,
- (e) the supply, storage and preservation from pollution of water for drinking, cooking and bathing purposes , and
- (f) the planting and preservation of trees

(2) The ³[Provincial Government] may direct that any of the following matters shall, subject to such exceptions and conditions as it may make and impose, be under the control and administration of a district board within the area subject to its authority—

- (g) the management of any property vested in Her Majesty ⁴[for the purposes of the Province] *state* .
- (h) the establishment, maintenance, visiting and management of markets, rest-houses, encamping-grounds and other public institutions, and the construction and repair of all buildings connected with these institutions ,
- (i) the construction and repair of embankments, and the supply, storage and control of water for agricultural purposes ,
- (j) the preservation and reclamation of soil, and the drainage and reclamation of swamps ,
- (k) the construction, repair and maintenance of famine preventive works, and the establishment and maintenance of such relief

¹ Ins by the Punjab District Boards (Amendment) Act, 1922 (Punjab 11 of 1922), s 9

² Subs by the A O 1937 for " L G ".

³ Ins by the A O 1937

(Chapter III—District and Local Boards)

works, relief-houses and other measures in time of famine or scarcity as may be entrusted to the charge of the board by the ¹[~~Provincial~~ Government],

I of 1871.

- (l) the registration of births, marriages and deaths,
- (m) fairs and agricultural shows and industrial exhibitions,
- (n) the establishment and management of pounds including, where the Cattle-Trespass Act, 1871, is in force, such functions of the ¹[~~Provincial~~ Government] and the Magistrate of the district ²under that Act as may be transferred to the board by the ¹[~~Provincial~~ Government],

XVII of 1878

- (o) the management of such public ferries as may be entrusted to the charge of the board under section 7A of the Northern India Ferries Act, 1878, as amended by this Act³,
 - (p) any other local works or measures likely to promote the health, comfort, convenience and interests of the public or the agricultural or industrial prosperity of the country, and
 - (q) any other matters which the ¹[~~Provincial~~ Government] may declare to be fit and proper matters to be taken under the control and administration of the board
- (3) The ¹[~~Provincial~~ Government] may cancel or modify any direction given by it under sub-section (2)
- (4) A district board shall, so far as the funds at its disposal permit, make due provision for all matters placed under its control or administration by or under this section.

⁴[(5) Nothing in this section shall be construed as authorising the ~~Provincial~~ Government to interfere with any property held or occupied for purposes which are purposes of the Central Government]

⁵[20A Subject to such terms as may be agreed upon beforehand the district board may—

Punjab Act III of 1922

- (a) delegate any of the following duties to a panchayat duly established under sections 5 of the Punjab Village Panchayat Act, 1921—
- (i) any matters under the direct administrative control of the board,
- (ii) the construction, maintenance or improvement of any property under the control or management of the board, other than property covered by clause (i),
- (iii) the control and management of cattle pounds, and

Power to
delegate to
village pan-
chayat

¹ Subs by the A O 1937 for "E G"

² See s 31 of that Act

³ The section, as amended by this Act, has been replaced by a new section by the A O 1937

⁴ Ins by the A O 1937

⁵ Ins by the Punjab District Boards (Amendment) Act, 1922 (Punjab Act 11 of 1922), s 10

(Chapter III—District and Local Boards)

(b) appoint a village panchayat duly appointed under the said Act to be a school attendance committee under section 16 of the Punjab Primary Education Act, 1919]

Punjab Act
VII of 1919

Duties of
local boards

21. (1) The ^{State} ~~Provincial~~ Government], or, subject to the control of the ^{State} ~~Provincial~~ Government], a district board, may direct that, within the area subject to the authority of a local board, any matter placed under the control and administration of the district board by or under section 20 shall be transferred to the control and administration of the local board

(2) A local board, as the agent of, and subject to the control of, the district board, shall, so far as the funds at its disposal permit, make due provision for all matters transferred to its control and administration under sub-section (1)

(3) It shall be the duty of the district board to enforce the responsibility imposed on a local board by sub-section (2)

Limits on
expenditure
of local
boards

22. Except as otherwise provided by this Act, a local board shall not incur expenses or undertake liabilities to any amount exceeding the limit imposed by the district board of its district

Power for
district board
to provide for
performance
of duty in
default of
local board

23. (1) If a local board makes default in the performance of any duty imposed on it by or under this Act, the district board may, by order in writing, fix a period for the performance of the duty

(2) If the duty is not performed within that period, the district board may appoint some person to perform it, and may provide for the expenses of, and incidental to, its performance out of the funds appropriated to or for the purposes of the local board

C—Joint Committees

Joint com-
mittees

24. A district board may concur with any other district board, or with any municipal committee, or with any cantonment authority, or with more than one such board, committee or authority, in appointing, out of their respective bodies, a joint committee, for any purpose in which they are jointly interested, and for delegating to any such joint committee any power which might be exercised by either or any of the boards, committees or authorities concerned, and in framing or modifying regulations as to the proceedings of any such joint committee, and as to the conduct of correspondence relating to the purpose for which the joint committee is appointed

D—Conduct of Business

Record and
publication of
proceedings

25. (1) Minutes of the proceedings at each meeting of a district or local board shall be drawn up and recorded in a book to be kept for the purpose, and shall be signed by the chairman of the meeting or of the next

¹ Subs by the A. O. 1937 for "L. G."

(Chapter III — District and Local Boards)

ensuing meeting, and shall be published in such manner as the ¹[Provincial Government] may from time to time direct, and shall, at all reasonable times and without charge, be open to the inspection of any inhabitant of the district who pays any rate or tax under this Act

(2) A copy of every resolution passed by a local board at a meeting shall, within three days from the date of the meeting, be forwarded to the district board and to the Deputy Commissioner

(3) A copy of every resolution passed by a district board at a meeting shall, within three days from the date of the meeting, be forwarded to the Deputy Commissioner

26 Every district board, and every local board, with the sanction of the district board, may make rules as to—

Power to
make rules as
to business
and affairs

- (a) the time and place of its meetings and the manner in which notice of meetings shall be given ,
- (b) the conduct of proceedings at meetings and the adjournment of meetings ,
- (c) the custody of the common seal and the purposes for which it shall be used ,
- (d) the division of duties amongst its members ,
- (e) the powers to be exercised by sub-committees or members to whom particular duties have been assigned ,
- ²[(ee) the powers conferred under sections 20 and 27 that may be delegated to the chairman, vice-chairman, secretary, civil surgeon, medical officer of health or any officer of the department of Public Instruction ,]
- (f) the persons by whom receipts shall be granted for money received under this Act ,
- (g) the duties, appointment, leave, suspension and removal of the officers and servants of the board ,
- (h) the term for which the vice-chairman shall hold office , and
- (i) other similar matters

Provided that every rule made under this section must be consistent with this Act and with any rules made by the ¹[~~Provincial~~ ^{State} Government] under this Act, and shall be published in such manner as the ¹[~~Pro-~~ ^{State}vincial Government] may direct

E—Officers and Servants.

27. (r) Subject to the provisions of this Act and to any rules which may be made under this Act in this behalf, every district board may

Employment
of officers and
servants

¹ Subs by the A O 1937 for "L. G"

² Ins by the Punjab District Boards (Amendment) Act 1922 (Punjab Act II of 1922), s 11

(Chapter III —District and Local Boards)

employ and pay such officers and servants as may be necessary and proper for the efficient execution of its duties and of the duties of the local boards acting under it

Provided that if, at any time, in the opinion of the Deputy Commissioner—

(a) the number of persons employed by a board under this section, or the remuneration assigned by the board to those persons, or to any of them, is excessive, or

(b) any such person is unfit for his employment, the board shall, on the requirement of the Deputy Commissioner, reduce the number, or remuneration, of those persons, or, as the case may be, dismiss the unfit person

¹[Provided further that the appointment of a secretary to the board shall be subject to the approval of the ²[~~Provincial~~ Government]]

(2) The board may appeal against any requirement under this section to the Commissioner of the Division, whose decision shall be final

¹[(3) When the Deputy Commissioner is a member of the board, the Commissioner and the ²[~~Provincial~~ Government] shall take the place of the Deputy Commissioner and the Commissioner, respectively, for the purposes of this section]

28. In the case of a 'person in the service of the Crown', a district board may—

(1) if his services are wholly lent to it, contribute to his pension or gratuity and leave-allowances in accordance with ⁴[the rules for the time being governing his conditions of service] , and

(2) if he devotes only a part of his time to the performance of duties in behalf of the board, contribute to his pension or gratuity and leave-allowances in such proportion as may be determined by the Government ⁵[under which he is serving]

29. In the case of an officer or servant, not being ⁶[a person in the service of the ~~Crown~~], referred to in section 28, a district board may—

(1) grant him leave-allowances, and, if he is employed under the district committee when this Act comes into force and not entitled to pension, or if his monthly pay is less than ⁷[twenty] rupees, a gratuity, and

(2) if empowered in this behalf by the ²[~~Provincial~~ Government],

¹ Ins by the Punjab District Boards (Amendment) Act, 1922 (Punjab Act 11 of 1922), s 12

² Subs by the A O 1937 for "L G"

³ Subs by the A O 1937 for "Govt official"

⁴ Subs by the A O 1937 for "the rules of the Civil Service Regulations for the time being in force"

⁵ Ins by the A O 1937

⁶ Subs by the A O 1937 for "a govt official"

⁷ Subs by the Punjab District Boards (Amendment) Act, 1922 (Punjab Act 11 of 1922), s 13, for "ten"

Pensions of
Government
officials serv-
ing boards

Pensions of
servants of
boards

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(a) subscribe in his behalf for pension or gratuity and leave-allowances under ¹[the rules for the time being governing his conditions of service] , or

(b) purchase for him ²* * * an annuity on his retirement

Provided that no pension, gratuity, leave-allowance or annuity shall exceed the sum to which, under ³[the rules for the time being governing his conditions of service], the servant would be entitled if the service had been ⁴[service under the Crown in India] *Govt.*

⁵[(3) Nothing in this section or in section 37 contained shall be deemed to prohibit the establishment of a Provident Fund by officers or servants of a district board, not being ⁶[persons in the service of the Crown], or to debar a district board, if otherwise expressly authorised by the ⁷[*Provincial* Government] in this behalf, from contributing from the district fund towards such Provident Fund at such rates and under such conditions as the district board may, by rules to be confirmed by the ⁷[*Pro-* *vincial* Government], fix and apportion for such purpose]

F—Taxation and Finance

⁸[30. A district board may, with the previous sanction of the *Provincial* Government, impose any tax which the *Provincial* Legislature has power to impose in the *Provinces* under the Government of *India*, Act, 1935. *Constitution* Power of taxation

26 Geo 5,
c 2

Provided that

(a) the *Provincial* Government may empower any District Board to impose without such sanction one or more of such taxes subject to such limitations as it may prescribe ,

(b) no tax imposed under this section shall be imposed in respect of any property subject to the local rate , and

¹ Subs by the A O 1937 for "the Rules of the Civil Service Regulations for the time being in force"

² The words "from the Govt or otherwise" rep by the A O 1937

³ Subs by the A O 1937 for "the Civil Service Regulations for the time being in force"

⁴ Subs by the A O 1937 for "service under the Govt"

⁵ Added by s 1 of Punjab Act 1 of 1905

⁶ Subs by the A O 1937 for "Govt officials"

⁷ Subs by the A O 1937 for "L G"

⁸ Subs by the A O 1937 for the original section which, as amended by Punjab Act 11 of 1922, s 14, and Punjab Act 6 of 1925, s 4, read as follows —

"30 A district board may impose—

(1) with the previous sanction of the L G any tax scheduled as exempted from the provisions of clause (a) of sub-section (3) of s 80A of the Government of India Act by rules under the said Act or a tax on the holder of any office under the G of I, the L G or a local authority
Provided that the L G may empower any district board to impose without such sanction one or more of such taxes subject to such limitation as it may prescribe

(2) with the previous sanction of the G G in C any other tax

Provided that no tax imposed under this section shall be imposed in respect of any property subject to the local rate "

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the constitution ^{1(c)} a District Board which immediately before the ²commencement of ~~Part III of the said Act~~ was lawfully levying any tax under this section as then in force, may continue to levy that tax until provision to the contrary is made by the ~~Central Legislature~~ *Parliament*

Procedure
in imposing
taxes

Explanation —In this section "tax" includes any duty, cess or fee]

31. (1) A district board may resolve, at a meeting convened and constituted in such manner as the ³[~~Provincial~~ Government] may prescribe, to propose the imposition of any tax under section 30

(2) When a resolution has been passed under sub-section (1), the board shall publish a notice defining the class of persons or description of property proposed to be taxed, the amount or rate of the tax to be imposed and the system of assessment to be adopted

(3) Any person likely to be directly affected by the proposed tax, and objecting to the same, may, within thirty days from the publication of the notice, send his objection in writing to the board, and the board shall, at a meeting convened and constituted as aforesaid, take his objection into consideration

(4) If no objection is sent within the said period of thirty days, or if the objections received, having been considered as aforesaid, are deemed insufficient, the board may submit its proposals to the ³[~~Provincial~~ Government], with the objections (if any) which have been sent in and with its decision thereon.

(5) The ³[~~Provincial~~ Government], on receiving proposals under sub-section (4), may sanction the same, or refuse to sanction them, or return them to the board for further consideration.

⁴[(6) When the proposals of a district board in respect of a tax have been sanctioned by the ~~Provincial~~ Government, then—

(a) in the Punjab, the ~~Provincial~~ Government shall notify the imposition of the tax in accordance with the proposals, and shall in the notification specify a date not less than three months from the date of notification on which the tax shall come into force ;

(b) elsewhere the board may, at a meeting convened and constituted as aforesaid, direct the imposition of the tax in accordance with those proposals, so however that in giving such a direction the Board shall fix a date on which the tax shall come into force, not being less than three months from the date of the meeting, and the direction shall be notified in the Official Gazette for the ~~Province~~ *Province*

¹ Cf s 143 (2) of the G of I Act, 1935

² I.e., the 1st April, 1937

³ Subs by the A O 1937 for "L G"

⁴ Subs by the A O 1937 for the original sub-sections

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(7) A notification of the imposition of a tax under this Act shall be conclusive evidence that the tax has been imposed in accordance with law]

32. The ¹[Provincial Government] may, by notification and the district board may, with the sanction of the ¹[Provincial Government], by a resolution passed at a meeting convened and constituted as the ¹[Provincial Government] may prescribe, abolish or reduce any tax imposed under sections 30 and 31

33. With the previous sanction of the ¹[Provincial Government], or of such officer as the ¹[Provincial Government] may authorize in this behalf, a district board or local board may fix and levy school-fees and fees for the use of, or benefits derived from, any of the works specified in section 20, clauses (c), (e), (h), (i) and (j), ²[fees for the registration of marriages] and fees at fairs, agricultural shows and industrial exhibitions held under its authority

34. When the control and administration of any matter is by or under this Act transferred to a district board, and at the time of the transfer the cost of that control and administration is defrayed from ~~Provincial revenue~~, the ¹[Provincial Government] shall, from time to time, allot to the district board such funds, or place at the disposal of the board such sources of income, as may, in the opinion of the ¹[Provincial Government] and of the board, be sufficient for maintaining the control and administration of the said matter in the state of efficiency existing at the date of transfer

35. There shall be formed for each district a fund, to be called the District fund district fund, and there shall be placed to the credit thereof—

- (a) the balance (if any) of the allotments made for the district under section 7 of the Punjab Local Rates Act, 1878,³ and of the road and school cesses which may be available for expenditure in the district on the day on which the district board comes into existence,
- (b) all proceeds of rates allotted to the district board under section 9,
- (c) the proceeds of all taxes imposed in the district under sections 30 and 31;
- (d) the amount of all fees levied by the district board or by local boards in the district under section 33,

¹ Subs by the A O 1937 for "L G"

² Ins by the Punjab District Boards (Amendment) Act, 1919 (Punjab 5 of 1919), s 2

³ Rep by this Act

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- (e) all funds allotted to the district board and the income arising from all sources of income placed at its disposal under section 34,
- (f) all rents and profits accruing from property vested in the district board or managed by the district board or a local board in the district,
- (g) all sums contributed to the fund by ¹[the Central or any ~~Provincial~~ Government] or by any committee, board or private person,
- (h) all sums received by the district board or by a local board in the district in the discharge of functions exercised by it under this Act, and
- (i) the proceeds of all sources of income which the ²[~~Provincial~~ Government] may order to be placed at the disposal of the district board

Provided that the ²[~~Provincial~~ Government] may revoke any order made under clause (i)

Vesting,
custody and
investment of
district fund

36. (1) The district fund shall be vested in the district board, and the balance standing at the credit of the fund shall be kept in the Government treasury or sub-treasury or in the bank to which the Government treasury business has been made over, unless the ²[~~Provincial~~ Government] in any cases otherwise permits

(2) Subject to such rules as the ³[~~Provincial~~ Government] may make in this behalf, the district board may ⁴[from time to time, with the previous sanction of the Commissioner, invest any portion of the district fund in securities of the ⁵[Central Government] or invest it in such other securities or place it in such other manner as the ²[~~Provincial~~ Government] may approve in this behalf, and with the previous sanction of the Commissioner, may vary such investment or placement for another or others of like nature] The income resulting from ⁶[such] securities ⁷[or placements] and the proceeds of the sale of the same shall be credited to the district fund

¹ Subs by the A O 1937 for "Govt"

² Subs by the A O 1937 for "L G"

³ The original words at this place were "G G in C" The words "L G subject to the control of the" were ins before them by the Decentralization Act, 1914 (4 of 1914), s 2 and Sch, Pt I, the words "subject to the control of the G G in C" were then rep by the Devolution Act, 1920 (38 of 1920), s 2 and Sch I, and the words "Provincial Govt" were subs by the A O 1937 for "L G"

⁴ Subs by the Punjab District Boards (Amendment) Act, 1925 (Punjab Act 6 of 1925), s 6, for "with the previous sanction of the L G invest any portion of the district fund in securities of the G of I or such other securities as the L G subject to the control of the G G in C may approve in this behalf and vary such investments for others of the same nature, or dispose of them"

⁵ Subs by the A O 1937 for "G of I."

⁶ Subs by the Punjab Act 6 of 1925, s 6, for "the".

⁷ Ins by s 6, *ibid*

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37. (1) The district fund shall be charged with the payment of the expenses of the district-post, the payment of the expenses of pauper lunatics sent to public asylums from the area under the authority of the district board, the expenses incurred in auditing the accounts of the district boards and local boards, and such portion of the cost of the Provincial Departments for education, sanitation, vaccination, medical relief and public works as may be held by the ¹[~~Provincial~~ Government] to be equitably debitable to the district board in return for services rendered to the board by those Departments

(2) Subject to the charges specified in sub-section (1), and to such rules as the ¹[~~Provincial~~ Government] may make with respect to the priority to be given to the several duties of the board or otherwise, the district fund shall be applicable to the payment, in whole or in part, of the charges and expenses incidental

²[(a) to the matters specified in sections 20, 27, 28 and 29 ,

(b) to grants-in-aid to educational and medical institutions within the area subject to the authority of the district board and

(c) with the sanction of the Commissioner and subject to the control of the ¹[~~Provincial~~ Government] to any charges and expenses incurred outside that area when such application of the fund is in the opinion of the board for the benefit of the inhabitants of that area]

38. In the case of works or undertakings which benefit more districts than one, when the district boards cannot agree, the Commissioner or Commissioners of the division or divisions, or when the districts are in different divisions and the Commissioners cannot agree, the ¹[~~Provincial~~ Government] may determine what proportion of the expenses of the work or undertaking shall be borne by each of the district funds of the districts benefited thereby , and such proportion shall be payable out of the several district funds accordingly

39. (1) Every district board shall appoint a finance committee consisting of not less than three of its members

(2) Every district board shall, on or before a prescribed day in each year, hold a meeting at which the finance committee shall submit to the board an estimate of the income and expenditure of the board for the next financial year, in such form as the ¹[~~Provincial~~ Government] may, by a rule made under this Act, prescribe

¹ Subs by the A O 1937 for " L. G "

² Subs by s 7, *ibid* , for " to the matters specified in sections 20, 27, 28 and 29 and to the provision of grants-in-aid to educational and medical institutions, within the area subject to the authority of the district board, and with the sanction of the Commissioner, outside that area, when such application of the fund is for the benefit of the inhabitants of that area "

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(3) The board shall consider the estimate, and may provisionally approve of it with or without modification

(4) The board shall, on or before a prescribed day, cause copies of the estimate, as provisionally approved by it, to be sent to the Deputy Commissioner

(5) The Deputy Commissioner shall, on or before a prescribed day, signify in writing to the board his approval or disapproval of the estimate. When he disapproves of the estimate, he shall state the nature of his objection. The board shall then consider the matter, and either modify the estimate, so as to remove the objection, or refer it through the Deputy Commissioner to the Commissioner of the division. If the Commissioner concurs in the objection, he shall make such modification in the estimate as may, in his judgment, be necessary to remove the objection, in whole or in part. If he does not concur in the objection, he shall pass the estimate, and his order shall be final and binding on the board.

(6) When the Deputy Commissioner has signified his approval of an estimate or the board has modified an estimate so as to remove the Deputy Commissioner's objections, or when the Commissioner has passed orders as provided in sub-section (5), no expenditure which is not provided for in the estimate as approved or modified, shall be incurred during the year to which the estimate relates without the previous sanction of the Deputy Commissioner.

(7) When the Deputy Commissioner is a member of the district board, the Commissioner and the ¹[Provincial Government] shall take the place of the Deputy Commissioner and the Commissioner, respectively, for the purposes of this section.

Accounts of
district
boards

40. Accounts of the receipts and expenditure of every district board shall be made up periodically to such days and in such form as the ¹[Provincial Government] prescribes, and shall be examined and audited as soon as may be after they are so made up by such persons as the ¹[Provincial Government] appoints in this behalf.

Estimates
and accounts
of local
boards

41. (1) Every local board shall submit annually to the district board of its district, on or before such date as the district board may appoint in this behalf, a statement of the requirements, and an estimate of the probable expenditure, of the local board for the coming financial year, and shall submit, as often as the district board may require, accounts of its receipts and expenditure.

(2) The district board shall signify in writing to the local board its approval or disapproval of an estimate submitted under this section, and powers similar to those conferred on the Deputy Commissioner and Commissioner by section 39, clauses (5) and (6), shall be exercised, in regard

¹ Subs by the A O 1937 for "L G"

(Chapter III —District and Local Boards)

to the estimate, by the district board and the Deputy Commissioner, or (when the Deputy Commissioner is a member of the district board) the Commissioner, respectively

Provided that, during the currency of any financial year, the Deputy Commissioner may sanction transfers of provision within the estimate finally approved, when inconvenience or undue delay would be caused by a previous reference to the district board

(3) The district board shall make arrangements, subject to the approval of the Deputy Commissioner, for the examination and audit of accounts submitted to it under this section, and may arrange for the publication of such accounts

42. Every district board shall cause a copy of every annual estimate provisionally or finally approved under section 39, and of every account made up under section 40, to be kept at its office, and any person paying rates or taxes under this Act may, at all reasonable times, inspect any such estimate or account without payment of any fee

Inspection of estimates and accounts

43. A statement of the accounts of a district board for each financial year, showing the income of the district fund under each head of receipt, the charges for establishment, the works undertaken, the sums expended on each work, and the balance, if any, of the fund remaining unspent at the end of the year, shall be prepared by the board in such form as the ^{state} [Provincial Government] prescribes, and an abstract of the same shall be published in the English and vernacular Official Gazettes, or in such other manner as the ^{state} ~~Provincial~~ Government may direct

Publication of abstract of accounts

G —Control

44. (1) The Commissioner of the division, or the Deputy Commissioner of the district, when he is not a member of the district board, may—

Control of Commissioner and Deputy Commissioner over boards and joint committees

(a) enter on and inspect, or cause to be entered on and inspected, any immoveable property within the limits of the division or district, respectively, occupied by any local board, district board or joint committee, or any work in progress within those limits under the direction of any such board or committee,

(b) by order in writing call for and inspect any document in the possession or under the control of any such board or committee having authority within those limits;

(c) by order in writing require any such board or committee to furnish such statements, accounts, reports and copies of docu-

¹ Subs. by the A O 1937 for "L G."

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ments relating to the proceedings or duties of the board or committee as he may think fit to call for, and

- (d) record in writing, for the consideration of any such board or committee, any observations he may think proper in regard to the proceedings or duties of the board or committee

(2) If any difference of opinion arises between officers exercising the powers conferred by sub-section (1), it shall be referred—

- (a) if it arises between two or more Deputy Commissioners in the same division, to the Commissioner, and

- (b) if it arises between two or more Deputy Commissioners in different divisions or between two or more Commissioners, to the ¹[~~Provincial~~ Government],

and the decision thereon of the Commissioner or of the ¹[~~Provincial~~ Government], as the case may be, shall be final

Power to suspend action

45. The Commissioner of the division or the Deputy Commissioner of the district may, by order in writing, suspend, within the division or district, respectively, the execution of any resolution or order of a district board or local board or joint committee, or prohibit the doing of any act within the said limits which is about to be done, or is being done, in pursuance of or under cover of this Act, if, in his opinion, the resolution, order or act is in excess of the powers conferred by law, or the execution of the resolution or order, or the doing of the act, is likely to lead to a breach of the peace, or to cause injury or annoyance to the public or to any class or body of persons

46. [Extraordinary powers of Deputy Commissioner in case of emergency] *Rep by the Punjab District Boards (Amendment) Act, 1922 (Punjab Act XI of 1922), s 15*

Power to provide for performance of duties in case of default of board

47. (1) When the Commissioner, after due inquiry, is satisfied that a district board has made default in performing any duty imposed upon it by or under this Act, he may, by an order in writing, fix a period for the performance of that duty, and, if it is not performed within the period so fixed, he may appoint some person to perform it, and may direct that the expense of performing it shall be paid, within such time as he may fix, by the board to that person

(2) If the expense is not so paid, the Commissioner may make an order directing the persons having the custody of the balance of the district fund to pay the expense, or so much thereof as is, from time to time, possible, from that balance in priority to all other charges against the same

¹ Subs by the A O 1937 for "L. G.".

(Chapter III — District and Local Boards)

48. When the control and administration of any public work is, by or under this Act, transferred to a district board, and at the time of the transfer the cost of that control and administration is defrayed from the ~~Provincial~~ ^{Fund or Estate} revenue, the ^{Power to invest other officers with power of control} ~~1~~ [Provincial Government] may invest any officer with respect to that work with the powers of a Commissioner under section 44 or section 47, or with the powers of a Deputy Commissioner under section 2^{19B}

49. When the Commissioner makes any order under section 45 or section 47, he shall forthwith forward to the ^{Report of action under preceding sections} ~~1~~ [Provincial Government], and when the Deputy Commissioner makes any order under section 45 or section 2^{19B} or an officer empowered under section 48 makes any order under section 2^{19B} or section 47, he shall forthwith forward to the Commissioner, for submission to the ^{Report of action under preceding sections} ~~1~~ [Provincial Government], a copy of the order, with a statement of the reasons for making it, and with such explanation, if any, as the board or committee concerned may wish to offer. The ~~1~~ [Provincial Government] may thereupon confirm, modify or rescind the order.

50. (1) It shall be the duty of the ^{Powers of Provincial Government and its officers over boards} ~~1~~ [Provincial Government] and of all Commissioners and Deputy Commissioners acting under its orders to require that the proceedings of district boards and local boards shall be in conformity with law and with the rules in force thereunder

(2) The ^{Powers of Provincial Government and its officers over boards} ~~1~~ [Provincial Government] may exercise all powers necessary for the purpose of sub-section (1), and may, amongst other things, by order in writing, annul any proceeding which it considers not to be in conformity with law and with the said rules

(3) The Commissioner of the division and the Deputy Commissioner of the district may, within their jurisdiction, for the same purpose, exercise such powers as may be conferred upon them by rules made in this behalf by the ^{Powers of Provincial Government and its officers over boards} ~~1~~ [Provincial Government]

51. If a district board or local board is not competent to perform, or persistently makes default in the performance of, the duties imposed on it by or under this or any other Act, or exceeds or abuses its powers, the ^{Power of Provincial Government to supersede, in case of incompetency, persistent default or abuse of powers} ~~1~~ [Provincial Government] may * * * * by notification, in which the reasons for so doing shall be stated, declare the board to be superseded

* * * * *

52. When a district board or local board is superseded under section 51, the following consequences shall ensue—

¹ Subs by the A. O. 1937 for "L. G."

² Subs by the Punjab District Boards (Amendment) Act, 1922 (Punjab Act 11 of 1922), s. 15, for "46"

³ The words "with the previous approval of the G. G. in C." rep by the Decentralization Act, 1914 (4 of 1914), s. 2 and Sch., Pt. I.

⁴ The proviso was rep. *ibid*

(Chapter III —District and Local Boards)

- (a) All members of the board shall from the date of the notification vacate their offices as such members ,
- (b) All powers and duties of the board may, until the board is reconstituted, be exercised and performed by such person as the ¹[Provincial Government] appoints in that behalf ,
- (c) Where a district board is superseded, all property vested in it shall, until it is reconstituted, vest in ¹~~His Majesty for the~~ ^{state} purposes of the Province]

Constitution
of new board,
and transfer
of functions
of superseded
local boards

53. (1) When a district board is superseded, the ¹~~Provincial~~ Government] shall, as soon as in its judgment conveniently may be, constitute another district board in its place

(2) When a local board is superseded, the ¹~~Provincial~~ Government] may either constitute another local board in its place, or transfer its functions to the district board, or, by a notification under section 10, to any other local board

Disputes

54. (1) If any dispute, for the decision of which this Act does not otherwise provide, arises between two or more boards constituted under this Act, or between a municipal committee or cantonment authority ²[or small town committee] and any such board, the matter shall be referred—

- (a) to the Deputy Commissioner, if the local authorities concerned are in the same district ,
- (b) to the Commissioner or Commissioners of the division or divisions, if the local authorities concerned are in different districts , and
- (c) to the ¹~~Provincial~~ Government], if the local authorities concerned are in different divisions and the Commissioners of those divisions cannot agree

(2) The decision of the authority to which any dispute is referred under this section shall be final

⁴~~Provided that if one of the parties to a dispute referred to the Provincial Government is a cantonment authority, the decision of the Provincial Government shall not have effect until it is concurred in by the Central Government]~~

(3) If, in the case mentioned in clause (a), the Deputy Commissioner is a member of one of the boards or committees concerned, his functions under this section shall be discharged by the Commissioner.

(4) "Local authority" in this section means a district board, local board, municipal committee, or cantonment authority ³[or shall town committee]

¹ Subs by the A O 1937 for " L G "

² Subs by the A O 1937 for " Her Majesty ".

³ Ins by the Punjab District Boards (Amendment) Act, 1922 (Punjab Act 11 of 1922), s 16

⁴ Ins by the A O 1937

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55. So far as may be consistent with the provisions of this Act—

- ¹[(1)] the ²[~~Provincial~~ Government] may ³[by notification] for any district or local board, or any class of such boards, make rules for—
- Power of the
Provincial
Government
to make
rules
- ³[(a) prescribing the manner in which the oath or affirmation of allegiance under section 11A shall be administered ,]
- (b) regulating the powers of district boards to make, vary and dispose of investments ,
- (c) dividing boards into classes, and fixing the powers of boards of each class ,
- (d) determining the mode and time of appointment or election of members of boards, the term of office, allowances (if any), and the qualifications and disqualifications of such members, and the qualifications and disqualifications of voters, and generally for regulating all elections under this Act ,
- (e) regulating the powers of boards to transfer property ,
- (f) regulating the powers of boards to contract and do other things necessary for the purposes of their constitution and the mode of executing contracts ,
- (g) determining the intermediate offices, if any, through which correspondence between boards or members of boards and the ²[~~Provincial~~ Government] or its officers shall pass ,
- (h) determining the language in which business shall be transacted ;
- (i) the employment, payment, suspension and removal of officers and servants under section 27 ;
- (j) the apportionment of the district fund between the general purposes of the district and the purposes of particular parts of the district ,
- ⁴[(k) the application of district funds, and the management and regulation of Provident Funds established under sub-section (3) of section 29 ,]
- (l) the form of estimates of income and expenditure under section 39 ,
- (m) the form of accounts and the manner of periodical audit under section 40 ;
- (n) the publication of abstracts of accounts under section 43 ;
- (o) the preparation of plans and estimates for works which are to be partly or wholly constructed at the expense of boards, and

¹ Sub-section (1) was rep and sub-section (2) re-numbered sub-section (1) by the Punjab District Boards (Amendment) Act, 1922 (Punjab Act 11 of 1922), s 17 (1)

² Subs by the A O 1937 for "L G".

³ Ins by Punjab Act 11 of 1922, s 17 (2)

⁴ Subs by Punjab Act 1 of 1905 for the original clause.

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as to the authority by which, and the conditions subject to which, such plans and estimates may be sanctioned;

- (p) the powers of supervision to be exercised by Commissioners and Deputy Commissioners under section 50;
- (q) the conduct of proceedings of boards, including the fixing of a quorum, the appointment or election of a chairman, and the term of office of a chairman and vice-chairman;
- (r) the appointment and payment of auditors of the accounts of boards;
- (s) the guidance of district boards when suits or other proceedings are intended to be or have been instituted by or against them in Civil Courts; and
- (t) generally determining the relations between district boards and local boards, and guiding boards and Government officers in all matters connected with the carrying out of the provisions of this Act

1* * * * *

²[(3) Rules under clause (d) of sub-section (1) may among other matters provide—

- (i) for the definition of the practices at elections held under the provisions of this Act which are to be deemed to be corrupt;
- (ii) for the investigation of allegations of corrupt practices;
- (iii) for making void the election of any person proved to the satisfaction of the ³[~~Provincial~~ ^{State} Government] to have been guilty of a corrupt practice or to have connived at or abetted the commission of a corrupt practice or whose agent has been so proved guilty or the result of whose election has been materially affected by the breach of any law or rule for the time being in force;
- (iv) for rendering incapable of district board office either permanently or for a term of years any person who may have been proved guilty as aforesaid of a corrupt practice or of conniving at or abetting the same,

¹ The following paragraphs were rep. by the Punjab District Boards (Amendment) Act, 1922 (Punjab Act 11 of 1922), s. 17 (4) —

"All such rules and alterations of rules shall be notified, and no rules or alteration of rules under clause (2) (d) shall come into operation until three months after they have been notified

Rules made under cl (2) (b) shall be subject to the control of the G. G. in C."

² Subs. by the Punjab District Boards (Amendment) Act, 1925 (Punjab Act 6 of 1925), s. 8, for the sub-section ins. by Punjab Act 11 of 1922, s. 17 (3).

³ Subs. by the A. O. 1937 for "L. G."

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- (v) for prescribing the authority by which questions relating to the matters referred to in clause (d) of sub-section (1) shall be determined , and
- (vi) for authorising courts to take cognizance of the breach of any such rules on the complaint of the Deputy Commissioner or some person authorised in writing by the Deputy Commissioner]

XXXIX of
1920

¹[55A. The ²[~~Provincial~~ Government] may invest any person or persons authorised by it to hold an inquiry into the conduct of an election or into allegations of corrupt practices or intimidation at an election with all or any of the powers conferred upon Commissioners appointed to hold an inquiry into an election by the provisions of Part II of the Indian Election Offences and Inquiries Act, 1920, and may prescribe the procedure to be followed and provide for the execution of any order as to costs passed by such person or persons in such inquiry]

Powers of the Provincial Government to invest with judicial powers officers appointed to inquire into conduct of elections

H —Regulations

56. (1) Every district board or local board empowered in this behalf by the ²[~~Provincial~~ Government] may make regulations for carrying out all or any of the purposes of this Act

Power to make regulations

(2) A regulation made under this section shall not have effect until it has been confirmed by the ²[~~Provincial~~ Government] and published in such manner and for such time as the ²[~~Provincial~~ Government] may direct.

57. (1) In making any regulation under section 56, a board may direct that a breach of the same shall be punished with fine which may extend to fifty rupees, and, in the case of a continuing breach, with a further fine which may extend to five rupees for every day during which the breach is continued after the offender has been convicted of such breach

Penalty for infringement of regulations

(2) In default of payment of any fine imposed under this section, the defaulter shall be liable to simple imprisonment for a term which may extend to eight days.

58. (1) Prosecutions under this Act for breach of regulations may be instituted by any board, or by any person authorised ³[by name or office] by the board in this behalf.

Prosecutions

(2) A Judge or Magistrate shall not be deemed to be within the

¹ Ins by the Punjab District Boards (Amendment) Act, 1925 (Punjab Act 6 of 1925), s 9

² Subs by the A O 1937 for " L G "

³ Ins by the Punjab District Boards (Amendment) Act, 1922 (Punjab Act 11 of 1922), s 18

(Chapter III —District and Local Boards)

meaning of section 555 of the Code of Criminal Procedure¹ a party to, or X of 1882 personally interested in, any case under this section merely because he is a member of the board

I —Supplemental and Exceptional Provisions

Penalty for obstructions

²[58A. Any person wilfully obstructing the board, or any officer or servant of the board, or any person authorised by the board, in the exercise of the powers conferred by this Act, shall be punishable with a fine which may extend to fifty rupees

Recovery of moneys claimable by the board

58B. (1) Save as provided in section 70 all moneys claimable by a district board under this Act may be recovered on application to a Magistrate having jurisdiction in the district, or in any other place where the person from whom the money is claimable may for the time being be resident, by the distress and sale of any moveable property within the limits of his jurisdiction belonging to such person. The cost of such proceedings shall be recoverable in same manner as the said moneys

(2) An application made under sub section (1) shall be in writing and shall be signed by the chairman or the secretary of the board but it shall not be necessary to present it in person

Payment of compensation

58C. The district board may make compensation out of the district fund to any person sustaining damage by reason of the exercise of any of the powers vested in the board, its officers and servants, under this Act, and shall make such compensation when the damage was caused by the negligence of the board, its officers or servants and the person sustaining the damage was not himself in default in the matter in respect of which the power was exercised

Power to compound offences

58D. (1) The district board or with the authorisation of the board its chairman, vice-chairman, or secretary may accept from any person against whom a reasonable suspicion exists that* he has committed an offence against this Act or any rule or regulation made thereunder, a sum of money by way of composition for such offence

(2) On payment of such sum of money the suspected person if in custody shall be discharged, and no further proceedings shall be taken against him in regard to the offence or alleged offence so compounded.

(3) Sums paid by way of composition under this section shall be credited to the district fund

(4) Authorisation under sub-section (1) to accept composition for alleged offences may be given by the board either generally in regard to all offences against this Act or the rules made thereunder or particularly

¹ See now the Code of Criminal Procedure, 1898 (5 of 1898), s 556

² Ss 58A to 58D were ins by the Punjab District Boards (Amendment) Act, 1922 (Punjab Act 11 of 1922), s 19

(Chapter III —District and Local Boards)

only in regard to a specified offence or offences of a specified class and may be at any time withdrawn by the board]

59. Every person shall be liable for the loss, waste or misapplication of any money or other property belonging to the district board, if such loss, waste or misapplication is a direct consequence of his neglect or misconduct while a member of a local board or of the district board, and a suit for compensation for the same may be instituted against him in such Court as the ¹[~~Provincial Government~~] directs, by the district board with the sanction of the Commissioner, or by the ²[~~Provincial Government~~].

Liability of members of boards

60. (1) The ¹[~~Provincial Government~~], before making any rules under section 55 or section 67, and a district or local board, before making any regulations under section 56, shall publish, in such manner as the ¹[~~Provincial Government~~] may deem sufficient for giving information to persons interested, a draft of the proposed rules or regulations, together with a notice specifying a date on or after which the draft will be taken into consideration, and shall, before making the rules or regulations, receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified

Procedure for making rules and regulations

(2) Every such rule or regulation shall be published in the Official Gazette in English and in such other language as the ¹[~~Provincial Government~~] directs, and such publication shall be conclusive evidence that the rule or regulation has been made as required by this section

61. Where any land is required for the purposes of this Act, the ¹[~~Provincial Government~~] may, at the request of a district board, proceed to acquire it under the provisions of the Land Acquisition Act, 1870³, and, on the payment by the board of the compensation awarded under that Act, and of the charges incurred by the Government in connection with the proceedings, the land shall vest in the board

Acquisition of land

X of 1870

62. (1) If any member, officer or servant of a district or local board or joint committee appointed under this Act is, otherwise than with the permission in writing of the Commissioner, directly or indirectly interested in any contract made with that board or joint committee, he shall be deemed to have committed an offence under the Indian Penal Code, section 168

Penalty on member, officer or servant, being interested in contracts made with a board or joint committee

XLV of 1860.

(2) A person shall not, by reason of being a shareholder in, or a member of, any incorporated or registered company, be held to be interested in any contract entered into between the company and a board or committee, but he shall not take part in any proceedings of the board or committee relating to any such contract

¹ Subs by the A O 1937 for "L G"

² Subs by the A O 1937 for "Secretary of State for India in Council"

³ See now the Land Acquisition Act, 1894 (1 of 1894)

(Chapter III — District and Local Boards)

Saving for
Act XI of
1879

63. Nothing in this Act shall affect the Local Authorities Loans Act, ^{XI of 1879}
1879¹

General
powers of
Provincial
Government
and Commis-
sioners

64. In all matters connected with this Act, the ²[~~Provincial~~ Government] shall have and exercise over Commissioners and Deputy Commissioners, and Commissioners shall have and exercise over Deputy Commissioners, the same authority and control as they respectively have and exercise over them in the general and revenue administration

65. [Contracts of local committees.] *Rep. by the Punjab District Boards (Amendment) Act, 1922 (Punjab Act XI of 1922), s. 20*

66. [Government officers serving under committees to continue under board] *Rep. by the Punjab District Boards (Amendment) Act, 1922 (Punjab Act XI of 1922), s. 21*

Power of
Provincial
Government
to except
local area
from opera-
tion of Act

67. (1) If the circumstances of any district or part of a district are, in the opinion of the ²[~~Provincial~~ Government], such that all or any of the provisions of this Chapter are unsuited thereto, the ²[~~Provincial~~ Government] may, by notification in the Official Gazette, except the district or part from the operation of those provisions, and thereupon those provisions shall not apply to the excepted district or part until again applied thereto by a like notification

(2) While any notification under this section is in force, the ²[~~Provincial~~ Government] may make rules to provide for any matter dealt with by the provisions to which the notification applies

Committee to
be constituted
for district
wholly
excepted
from Act

68. When a district is excepted, under section 67, from all the provisions of this Chapter, a committee shall, except where the ²[~~Provincial~~ Government] for special reasons otherwise directs, be constituted for the control and administration in that district of the matters mentioned in section 20, or of such of them as the ²[~~Provincial~~ Government] may, from time to time, specify, and the ²[~~Provincial~~ Government] shall, from time to time, determine the manner in which the members of the committee shall be appointed and removed, define the functions and authority of the committee, and place at its disposal, subject to such control as the ²[~~Provincial~~ Government] thinks fit—

- (a) the balance standing at the credit of the district fund at the time when the district is excepted or, as the case may be, the balance of the allotments made for the district under section 7 of the ³Punjab Local Rates Act, 1878, and of the road and school cesses, which may be available for expenditure in the district at that time, ^{V of 1878}
- (b) all proceeds of rates which, but for the district being excepted, would be allotted to the district board under section 9 of this Act, and

¹ See now the Local Authorities Loans Act, 1914 (9 of 1914)

² Subs. by the A O 1937 for "L G".

³ Rep. by this Act

(Chapter III—District and Local Boards. Chapter IV.—Supplemental Provisions as to Taxation)

(c) such other sources of income mentioned in section 35 of this Act as the ¹[~~Provincial~~ Government] thinks fit.

Provided that not less than one-half of the members of the committee shall be persons who own landed property or reside or carry on trade or business in the district and are not servants of ²[the Crown]

69. (1) When any local area in which Act XX of 1856 (*An Act to make better provision for the appointment and maintenance of Police Chaukidars in Cities, Towns, Stations, Suburbs and Bazzars in the Presidency of Fort William in Bengal*) is in force is included in any local area over which a district board established under this Act has authority, the ¹[~~Provincial~~ Government] may, by notification, direct that that Act shall cease to be in force in the local area so included, and that every panchayat constituted under that Act for that local area shall cease to exist

Power to direct that Act XX of 1856 shall cease to be in force

(2) When a direction is issued under this section in respect of any local area in which the said Act XX of 1856 is in force, the amount, if any, then available under section 36 of that Act for purposes of improvement in that local area, shall be expended therein by the Deputy Commissioner for such purposes.

CHAPTER IV.

SUPPLEMENTAL PROVISIONS AS TO TAXATION.

70. All rates and taxes imposed under this Act, and all arrears of such rates and taxes, may be recovered as if they were arrears of land-revenue. ^{Recovery of rates}

71. (1) The ¹[~~Provincial~~ Government] may, by notification, determine the person by whom the local rate or any tax imposed under this Act shall be assessed and collected, and make rules for the assessment and collection of the rate or tax, and direct in what manner persons employed in the assessment or collection shall be remunerated

Local rate or tax how to be assessed and collected

(2) The provisions of section 60 shall apply to all rules made under this section.

72. (1) In matters connected with the assessment and collection of any rate or tax leviable under this Act, an appeal shall lie from the order of any person authorised under this Act to make assessments or collections to such person as the ¹[~~Provincial~~ Government] appoints

Appeals.

Provided that the appeal shall be presented within thirty days from the date of the order.

¹ Subs by the A. O. 1937 for "L. G."

² Subs by the A. O. 1937 for "the Govt"

(Chapter IV.—Supplemental Provisions as to Taxation Chapter V —
Amendment of the Northern India Ferries Act, 1878)

(2) The order passed on an appeal under this section shall be final.

Instalments
of rates and
taxes

73. (1) The ¹[~~Provincial~~ Government] may, by notification, prescribe by what instalments and at what times any rate or tax leviable under this Act shall be payable.

Provided that every instalment of the local rate leviable under section 5 shall be payable with an instalment of the land-revenue

(2) In any local area subject to the authority of a district board the ~~1~~ [~~Provincial~~ Government] may, by notification, delegate to the board, subject to such conditions as it thinks fit, its powers under this section.

Power to
Provincial
Government
to exempt
from taxation

74. The ¹[~~Provincial~~ Government] may, by notification, remit or reduce any rate or tax imposed under this Act or exempt any person or class of persons, or any description of property, wholly or in any part from liability to any such rate or tax, and cancel any such remission, reduction or exemption

Power to
direct
measure-
ments

75. When measurements are necessary for the assessment of the local rate or of any tax imposed under this Act, the ¹[~~Provincial~~ Government] may, by notification, direct such measurements to be made

Suits relating
to rates and
taxes under
this Act
cognizable by
Courts having
cognizance of
suits for rent

76. Suits for the recovery from co-sharers, tenants or others of any sum on account of any rate or tax imposed under this Act, and suits on account of illegal exaction of any such rate or tax, or for settlement of accounts connected therewith, shall, unless the ¹[~~Provincial~~ Government] otherwise directs, be cognizable by the Courts which for the time being have cognizance of suits for rent due on land

Confirmation
and recovery
of existing
rates

77. All rates for the maintenance of roads, schools or the district-post, for the payment of which provision has been made in any settlement record previous to the passing of this Act, or which have been habitually levied by Government, shall be deemed to have been and to be legally imposed, and to have been and to be legally recoverable as if they were arrears of land-revenue payable directly to Government and due on the land in respect of which they are payable.

CHAPTER V.

AMENDMENT OF THE NORTHERN INDIA FERRIES ACT, 1878.

[Rep by the Repealing Act, 1938 (1 of 1938), s. 2 and Sch.]

¹ Subs by the A O 1937 for "L G".

[THE MADRAS PARTITION-DEEDS (VALIDATION)
ACT, 1884]

ACT No II OF 1884.

[18th January, 1884]

An Act to give effect to certain unregistered instruments of partition relating to immoveable property in the Madras Presidency, and to remove doubts as to the titles conferred thereby

WHEREAS it is expedient to give effect to certain unregistered instruments of partition relating to immoveable property in the Madras Presidency, and to remove doubts as to the titles conferred thereby, It is hereby enacted as follows —

1. Notwithstanding anything contained in any Act to the contrary, instruments of partition relating to immoveable property in the Madras Presidency, which have been executed before the passing of this Act and have not been registered, shall have the same force and effect as if they had been registered, under the law in force at the time when they were executed.

Certain un-registered instruments of partition to have same force and effect as registered instruments

Provided that this Act shall not—

- (a) apply to any unregistered instrument of partition which has been superseded by an instrument of partition duly registered, or
- (b) affect the title of a transferee for value in good faith of property, whether he has or has not had notice of an unregistered instrument of partition relating to that property, or
- (c) affect any right established by a final decree of a Court of competent jurisdiction.

2. When any person to whom any right has accrued on the partition, or any person claiming under that person, has, by any such transfer as is mentioned in section 1, clause (b), been deprived of any right created by the partition, he shall be entitled to recover compensation in damages from any sharer who has directly or indirectly caused such privation of right, or, if the sharer is dead, from his assets

Compensation to person deprived of right owing to transfer under section 1, clause (b)

Provided that suit be brought * * * * * within three years from the date of the transfer if the transfer is made after this Act comes into force

¹ Short title given by the Amending Act, 1901 (11 of 1901)
For Statement of Objects and Reasons, see Gazette of India, 1883, Pt V, p 662, for Proceedings in Council, see *ibid*, 1883, Supplement, p 2095, and *ibid*, 1884, Supplement, p 164

² The words "within three years after the date on which this Act comes into force or" rep. by the Amending Act, 1891 (12 of 1891)

THE INDIAN EXPLOSIVES ACT, 1884.

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- Local extent
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ACT No. IV OF 1884¹

[26th February, 1884]

An Act to regulate the manufacture, possession, use, sale,
transport and importation of Explosives

WHEREAS it is expedient to regulate the manufacture, possession,

¹ For Statement of Objects and Reasons, see Gazette of India, 1883, Pt V, p. 22; for Proceedings in Council, see *ibid*, 1882, p 1856, and *ibid*, 1883, Supplement, p 43, and *ibid*, 1884, Supplement, p 377

This Act has been declared under s 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the Districts of Hazaribagh, Lohardaga (now called the Ranchi District—see Calcutta Gazette, 1899, Pt I, p 44), Palamau and Manbhum and in Pargana Dhalbhum and the Kolhan in the Singbhum District of the Chota Nagpur Division—see Gazette of India, 1896, Pt I, p 972

It has been declared to be in force in the Sonthal Parganas by the Sonthal Parganas Settlement Regulation (3 of 1872), s 3, and extended to Berar by the Berar Laws Act, 1941 (4 of 1941) and to Porahat Estate in the Province of Bihar by Bihar Reg 2 of 1946

For the law relating to explosive substances, see also the Explosive Substances Act, 1908 (6 of 1908)

use, sale, transport and importation of explosives, It is hereby enacted as follows —

1. (1) This Act may be called the Indian Explosives Act, 1884, and Short title
Local extent
- (2) It extends to ¹[all the Provinces of India]
2. (1) This Act shall come into force on such day² as the ³[Central Government], by notification in the ⁴[Official Gazette], appoints. Commence-
ment

5* * * * *

3. [*Repeal of portions of Act XII of 1875*] *Rep by the Indian Ports Act, 1889 (X of 1889)⁶, s 2 and Sch II*

4. In this Act, unless there is something repugnant in the subject or Definitions context,—

(1) "explosive"

(a) means gunpowder, nitro-glycerine, dynamite, gun-cotton, blasting powders, fulminate of mercury or of other metals, coloured fires and every other substance, whether similar to those above-mentioned or not, used or manufactured with a view to produce a practical effect by explosion, or a pyrotechnic effect, and

(b) includes fog-signals, fireworks, fuses, rockets, percussion-caps, detonators, cartridges, ammunition of all descriptions, and every adaptation or preparation of an explosive as above defined

(2) "manufacture" includes the process of dividing into its component parts, or otherwise breaking up or unmaking, any explosive, or making fit for use any damaged explosive, and the process of re-making, altering or repairing any explosive

(3) "vessel" includes every ship, boat and other vessel used in navigation, whether propelled by oars or otherwise

(4) "carriage" includes any carriage, wagon, cart, truck, vehicle or other means of conveying goods, or passengers by land, in whatever manner the same may be propelled

(5) "master" includes every person (except a pilot or harbour-master) having for the time being command or charge of a vessel provided that, in reference to any boat belonging to a ship, "master" shall mean the master of the ship.

(6) "import" means to bring into ^{India} ~~the Provinces~~ by sea or land

5. (1) The ³[Central Government] may for any part of ^{India} ~~the Pro-~~ Power to
make rules

vinces], **

India

¹ Subs by the A O 1948 for "the whole of British India".

² The 1st July, 1887—see Gazette of India, 1887, Pt I, p 307

³ Subs by the A O 1937 for "G G in C"

⁴ Subs by the A O 1937 for "Gazette of India"

⁵ Sub-section (2) was rep by the Amending Act, 1891 (12 of 1891)

⁶ Rep by the Indian Ports Act, 1908 (15 of 1908)

⁷ For a list of authorised explosives, see Gazette of India, 1936, Pt II, p 962

⁸ Subs by the A O 1948 for "British India"

⁹ The words "and each L G, with the previous sanction of the G G in C, may for any part of the territories under its administration," rep by the A O 1937

as to licensing of the manufacture, possession, use, sale, transport and importation of explosives

make rules¹ consistent with this Act to regulate or prohibit, except under and in accordance with the conditions of a license granted as provided by those rules, the manufacture, possession, use, sale, transport and importation of explosives, or any specified class of explosives.

(2) Rules under this section may provide for all or any of the following, among other matters, that is to say —

- (a) the authority by which licenses may be granted ,
- (b) the fees to be charged for licenses, and the other sums (if any) to be paid for expenses by applicants for licenses ,
- (c) the manner in which applications for licenses must be made, and the matters to be specified in such applications ,
- (d) the form in which, and the conditions on and subject to which, licenses must be granted ,
- (e) the period for which licenses are to remain in force , and
- (f) the exemption absolutely or subject to conditions of any explosives from the operation of the rules

(3) ²[Rules made under this section may] impose penalties on all persons manufacturing, possessing, using, selling, transporting or importing explosives in breach of the rules, or otherwise contravening the rules

Provided that the maximum penalty which may be imposed by any such rules shall not exceed—

- (a) in the case of a person so importing or manufacturing an explosive, a fine which may extend to three thousand rupees ,
- (b) in the case of a person so possessing, using or transporting an explosive, a fine which may extend to one thousand rupees ;
- (c) in the case of a person so selling an explosive, a fine which may extend to five hundred rupees , and
- (d) in any other case, two hundred rupees

Power for Central Government to prohibit the manufacture, possession or importation of specially dangerous explosives

6. (1) Notwithstanding anything in the rules under the last foregoing section, the ³[Central Government] may, from time to time, by notification in the ⁴[Official Gazette],—

- (a) prohibit, either absolutely or subject to conditions, the manufacture, possession or importation of any explosive which is of so dangerous a character that, in the opinion of the ⁵[Central Government], it is expedient for the public safety to issue the notification ;^{5*}

* * * * *

(2) The officers of sea customs at every port shall have the same power in respect of any explosive with regard to the importation of which a notification has been issued under this section and the vessel containing the

¹ For the Explosives Rules, 1940, made under ss 5 and 7, see Gen. R. & O., Supplementary Vol VI, p 90

² Subs by the A O 1937 for "The authority making rules under this section may by the rules"

³ Subs by the A O 1937 for "G G in C"

⁴ Subs by the A O 1937 for "Gazette of India"

⁵ The word "and" and clause (b) rep by the Repealing and Amending Act, 1914 (10 of 1914)

explosive as they have for the time being in respect of any article the importation of which is prohibited or regulated by the law relating to sea customs¹ and the vessel containing the same, and the enactments for the time being in force relating to sea customs or any such article or vessel shall apply accordingly.

(3) Any person manufacturing, possessing or importing an explosive in contravention of a notification issued under this section shall be ~~punished with fine which may extend to three thousand rupees~~ and, in the case of importation by water, the owner and master of the vessel in which the explosive is imported shall, in the absence of reasonable excuse, each be punished with fine which may extend to three thousand rupees ~~He may~~

7. (1) The ²[Central Government] * * * * may make rules ^{Power to make rules} consistent with this Act authorizing any officer, either by name or in virtue ^{conferring powers of inspection, search, seizure, detention and removal} of his office—

- (a) to enter, inspect and examine any place, carriage or vessel in which an explosive is being manufactured, possessed, used, sold, transported or imported under a license granted under this Act, or in which he has reason to believe that an explosive has been or is being manufactured, possessed, used, sold, transported or imported in contravention of this Act or of the rules made under this Act,
- (b) to search for explosives therein,
- (c) to take samples of any explosive found therein on payment of the value thereof, and
- (d) to seize, detain, remove and, if necessary, destroy any explosive found therein

(2) The provisions of the Code of Criminal Procedure⁴ relating to searches under that Code shall, so far as the same are applicable, apply to searches by officers authorized by rules under this section

8. ⁵[(1)] Whenever there occurs in or about, or in connection with, ^{Notice of accidents} any place in which an explosive is manufactured possessed or used, or any carriage or vessel either conveying an explosive or on or from which an explosive is being loaded or unloaded, any accident by explosion or by fire attended with loss of human life or serious injury to person or property, or of a description usually attended with such loss or injury, the occupier of the place, or the master of the vessel or the person in charge of the carriage, as the case may be, shall ⁶[within such time and in such manner as may be by rule prescribed give notice thereof and of the attendant loss of human life or personal injury, if any, to the Chief Inspector of Explosives in India and] to the officer in charge of the nearest police station

¹ See Chapter IV of the Sea Customs Act, 1878 (8 of 1878)

² Subs by the A. O. 1937 for "G G in C"

³ The words "or the L. G. with the previous sanction of the G G in C" rep by the A. O. 1937

⁴ See now the Code of Criminal Procedure, 1898 (5 of 1898), ss 101 to 103

⁵ S 8 was renumbered as sub-section (1) of that section by the Explosives (Amendment) Ordinance, 1945 (18 of 1945), s. 2.

⁶ Subs. by s. 2, *ibid*, for "forthwith give notice thereof"

¹[(2) Whoever in contravention of sub-section (1) fails to give notice of any accident shall be punishable with fine which may extend to five hundred rupees or if the accident is attended by loss of human life, with imprisonment for a term which may extend to three months, or with fine, or with both]

Inquiry into
accidents

²[9 (1) Where any accident such as is referred to in section 8 occurs in or about or in connection with any place, carriage or vessel under the control of any of ~~His Majesty's~~ ^{the Indian} Forces, an inquiry into the causes of the accident shall be held by the naval, military, or air force authority concerned, and where any such accident occurs in any other circumstances, the District Magistrate (or in a Presidency-town, the Commissioner of Police) shall, in cases attended by loss of human life, or may, in any other case, hold or direct a Magistrate subordinate to him to hold, such an inquiry

(2) Any person holding an inquiry under this section shall have all the powers of a Magistrate in holding an inquiry into an offence under the Code of Criminal Procedure, 1898, and may exercise such of the powers V. of 1898. conferred on any officer by rules under section 7 as he may think it necessary or expedient to exercise for the purposes of the inquiry

(3) The person holding an inquiry under this section shall make a report to the Central Government stating the causes of the accident and its circumstances

(4) The Central Government may make rules—

- (a) to regulate the procedure at inquiries under this section ;
- (b) to enable the Chief Inspector of Explosives in India to be present or represented at any such inquiry ;
- (c) to permit the Chief Inspector of Explosives in India or his representative to examine any witnesses at the inquiry ,
- (d) to provide that where the Chief Inspector of Explosives in India is not present or represented at any such inquiry, a report of the proceedings thereof shall be sent to him ,
- (e) to prescribe the manner in which and the time within which notices referred to in section 8 shall be given]

Inquiry into
more serious
accidents

²[9A. (1) The Central Government may, where it is of opinion, whether or not it has received the report of an inquiry under section 9, that an inquiry of more formal character should be held into the causes of an accident such as is referred to in section 8, appoint the Chief Inspector of Explosives in India or any other competent person to hold such inquiry, and may also appoint one or more persons possessing legal or special knowledge to act as assessors in such inquiry

(2) Where the Central Government orders an inquiry under this section, it may also direct that any inquiry under section 9 pending at the time shall be discontinued

¹ Sub-section (2) ins by the Explosives (Amendment) Ordinance, 1945 (18 of 1945), s 2

² Ss 9 and 9A were subs by s. 3, *ibid*, for the original s 9, as amended by the A O 1937

V of 1908

(3) The person appointed to hold an inquiry under this section shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 for the purposes of enforcing the attendance of witnesses and compelling the production of documents and material objects, and every person required by such person as aforesaid to furnish any information shall be deemed to be legally bound so to do within the meaning of section 176 of the Indian Penal Code

XLV of 1860

(4) Any person holding an inquiry under this section may exercise such of the powers conferred on any officer by rules under section 7 as he may think it necessary or expedient to exercise for the purposes of the inquiry

(5) The person holding an inquiry under this section shall make a report to the Central Government stating the causes of the accident and its circumstances, and adding any observations which he or any of the assessors may think fit to make, and the Central Government shall cause every report so made to be published at such time and in such manner as it may think fit

(6) The Central Government may make rules for regulating the procedure at inquiries under this section]

10. When a person is convicted of an offence punishable under this Act or the rules made under this Act, the Court before which he is convicted may direct that the explosive, or ingredient of the explosive, or the substance (if any) in respect of which the offence has been committed, or any part of that explosive, ingredient or substance, shall, with the receptacles containing the same, be forfeited

Forfeiture
of explosives

11. Where the owner or master of a vessel is adjudged under this Act to pay a fine for an offence committed with, or in relation to, that vessel, the Court may, in addition to any other power it may have for the purpose of compelling payment of the fine, direct it to be levied by distress and sale of the vessel, and the tackle, apparel and furniture thereof, or so much thereof as is necessary

Distress of
vessel

XLV of 1860

12. Whoever abets, within the meaning of the Indian Penal Code, the commission of an offence punishable under this Act, or the rules made under this Act, or attempts to commit any such offence and in such attempt does any act towards the commission of the same, shall be punished as if he had committed the offence

Abetment
and attempts

13. Whoever is found committing any act for which he is punishable under this Act or the rules under this Act, and which tends to cause explosion or fire in or about any place where an explosive is manufactured or stored, or any railway or port, or any carriage, ship or boat, may be apprehended without a warrant by a Police-officer, or by the occupier of, or the agent or servant of, or other person authorized by the occupier of, that place, or by any agent or servant of, or other person authorized by, the railway administration or conservator of the port, and be removed from the place where he is arrested and conveyed as soon as conveniently may be before a Magistrate,

Power to
arrest with-
out warrant
persons
committing
dangerous
offences

Saving and
power to
exempt

¹[14 (1) Nothing in this Act, except sections 8, 9 and 9A, shall apply to the manufacture, possession, use, transport or importation of any explosive—

(a) by any of ~~His Majesty's~~ ^{the Indian} Forces in accordance with rules or regulations made by ~~His Majesty's Government in the United Kingdom or the Central Government~~,

(b) by any person employed under ^{State} ~~the Central Government or under a Provincial Government~~ in execution of this Act

(2) The Central Government may by notification in the official Gazette exempt, absolutely or subject to any such conditions as it may think fit to impose, any explosive from all or any of the provisions of this Act]

Saving of
Indian Arms
Act, 1878

15 Nothing in this Act shall affect the provisions of the Indian Arms Act, 1878 ^{XI of 1878}

Provided that an authority granting a license under this Act for the manufacture, possession, sale, transport or importation of an explosive may, if empowered in this behalf by the rules under which the license is granted, direct by an order written on the license that it shall have the effect of a like license granted under the said Indian Arms Act

Saving as
to liability
under other
law

16 Nothing in this Act or the rules under this Act shall prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act or those rules, or from being liable under that other law to any other or higher punishment or penalty than that provided by this Act or those rules

Provided that a person shall not be punished twice for the same offence.

Extension
of definition
of "explosive"
to other
explosive
substances

17. The ³[Central Government] may, from time to time, by notification in the ⁴[Official Gazette], declare⁵ that any substance which appears to the ³[Central Government] to be specially dangerous to life or property, by reason either of its explosive properties or of any process in the manufacture thereof being liable to explosion, shall be deemed to be an explosive within the meaning of this Act, and the provisions of this Act (subject to such exceptions, limitations and restrictions as may be specified in the notification) shall accordingly extend to that substance in like manner as if it were included in the definition of the term "explosive" in this Act

Procedure
for making
publication
and confirma-
tion of rules

18 (1) An authority making rules under this Act shall, before making the rules, publish a draft of the proposed rules for the information of persons likely to be affected thereby

(2) The publication shall be made in such manner as the ³[Central Government], from time to time, by notification in the ⁴[Official Gazette] prescribes⁶

¹ Subs by the Explosives (Amendment) Ordinance, 1945 (18 of 1945), s. 4, for the original s 14, as amended by the Repealing and Amending Act, 1927 (10 of 1927), s 2 and Sch I, and the A O 1937.

² Subs by the A O 1948 for "any Govt in British India"

³ Subs by the A O 1937 for "G G in C"

⁴ Subs by the A O 1937 for "Gazette of India"

⁵ Picric acid with certain exceptions has been declared to be an explosive within the meaning of this Act, see Gazette of India, 1926, Pt I, p 1264

⁶ For mode prescribed, see Gazette of India, 1927, Pt I, p 769

(3) There shall be published with the draft a notice specifying a date at or after which the draft will be taken into consideration

(4) The authority making the rules shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified

(5) A rule made under this Act shall not take effect ¹ * * * * * until it has been published in the ²[Official Gazette], ³ * * * * *

(6) The publication in the ⁴[Official Gazette] of a rule purporting to be made under this Act shall be conclusive evidence that it has been duly made, and, if it requires sanction, that it has been duly sanctioned

(7) All powers to make rules conferred by this Act may be exercised from time to time as occasion requires

THE AGRICULTURISTS' LOANS ACT, 1884

ACT No XII OF 1884 ⁵

[24th July, 1884]

An Act to amend and provide for the extension of the Northern India Takkávi Act, 1879

X of 1879.

WHEREAS it is expedient to amend the Northern India Takkávi Act, Preamble 1879, and provide for its extension to ⁶[other Provinces of India]; It is hereby enacted as follows:—

1 (1) This Act may be called the Agriculturists' Loans Act, 1884, and ^{Short title}

(2) It shall come into force on the first day of August, 1884 ^{Commencement}

2. (1) This section and section 3 extend to ^{Local extent} ~~all the Provinces of~~ ^{part 4 states & part c states} India] ^{except part B states}

(2) The rest of this Act extends in the first instance only to ^{after Provinces} ~~the United Provinces, East Punjab, the Central Provinces, Assam, Delhi and Ajmer-Merwara~~]

¹ The words "if it is made by the G G in C" rep by the A O 1937

² Subs by the A O 1937 for "Gazette of India"

³ The words "and if it is made by the L G until it has been published in the local official Gazette" rep by the A O 1937

⁴ Subs by the A O 1937 for "Gazette"

⁵ For Statement of Objects and Reasons, see Gazette of India, 1884, Pt V, p 2, for Proceedings in Council, see *ibid.*, Supplement, pp 41, 165 and 1130

This Act has been declared to be in force in the Khondmals District by the Khondmals Laws Regulation, 1936 (4 of 1936), as amended by Orissa Reg 2 of 1939, and in the Angul District by the Angul Laws Regulation, 1936 (5 of 1936), as amended by Orissa Reg 1 of 1939 and extended by notification to—

the lower Province of Bengal, see Calcutta Gazette, 1885, Pt I, p 555,

the Madras Presidency, see Fort St George Gazette, 1886, Pt I, p 138,

the Sonthal Parganas, see Calcutta Gazette, 1885, Pt I, p 670,

the Province of Coorg, see Coorg District Gazette, 1887, Pt I, p 670

It has been amended in—

C P. and Berar by C P & Berar Act 34 of 1947,

Coorg by Coorg Act 3 of 1936, *

Madras by Madras Act 16 of 1935,

Orissa by Orissa Act 6 of 1937, and

U. P. by U P Acts 12 of 1922, 12 of 1934 and 12 of 1948

⁶ Subs by the A O 1948 for "any part of British India"

⁷ Subs by the A O 1948 for "the whole of British India",

⁸ Subs by the A O 1948 for the original words . . .

(3) But ^{State} [any Provincial Government] may, from time to time, by notification in the Official Gazette, extend the rest of this Act to the whole or any part of the territories under its administration

3. [Repeal of Act X of 1879, and sections 4 and 5 of Act XV of 1880] Rep by the Repealing Act, 1938 (I of 1938), s 2 and Sch

Power for
Provincial
Government
to make
rules

24. (1) ^{State} [Provincial Government] ^{State} [or, in a province for which there is a Board of Revenue or Financial Commissioner, such Board or Financial Commissioner, subject to the control of the ^{State} [Provincial Government]] may, from time to time, * * * make rules⁶ as to loans to be made to owners and occupiers of arable land, for the relief of distress, the purchase of seed or cattle, or any other purpose not specified in the Land Improvement Loans Act, 1883, but connected with agricultural objects

XIX of 188

(2) All such rules shall be published in the '[Official Gazette]'.
Recovery of loans

Recovery of
loans

5 Every loan made in accordance with such rules, all interest (if any) chargeable thereon, and costs (if any) incurred in making or recovering the same, shall, when they become due, be recoverable from the person to whom the loan was made, or from any person who has become surety for the repayment thereof, as if they were arrears of land-revenue or costs incurred in recovering the same due by the person to whom the loan was made or by his surety

Liability of
joint-bor-
rowers as
among
themselves

6. When a loan is made under this Act to the members of a village community or to any other persons on such terms that all of them are jointly and severally bound to the Government for the payment of the whole amount payable in respect thereof, and a statement showing the portion of that amount which as among themselves each is bound to contribute is entered upon the order granting the loan and is signed, marked, or sealed by each of them or his agent duly authorized in this behalf and by the officer making the order, that statement shall be conclusive evidence of the portion of that amount which as among themselves each of those persons is bound to contribute

THE PANCH MAHĀLS LAWS ACT, 1885.

ACT No VII OF 1885.^a

[20th February, 1885]

An Act to amend the law in force in the Pānch Mahāls.

WHEREAS it is expedient that the law in force in the territory com-

¹ Subs by the A O 1937 for "any other L G"

² S 4 has been amended in its application to the U. P Madras, Orissa and Coorg by U. P Acts 12 of 1922, 12 of 1934 and 12 of 1948, Madras Act 16 of 1935, Orissa Act 6 of 1937 and Coorg Act 3 of 1936, respectively.

³ Subs by the A O 1937 for "L G"

⁴ Ins by the Decentralization Act, 1914 (4 of 1914), s. 2 and Sch, Pt I

⁵ The words "subject to the control of the G G in C." rep. by the Decentralization Act, 1914 (4 of 1914), s. 2 and Sch, Pt I

⁶ For rules under this power, see different local Rules and Orders

⁷ Subs by the A O 1937 for "local official Gazette"

⁸ For Statement of Objects and Reasons, see Gazette of India, 1884, Pt V, p 594, and for Proceedings in Council, see *ibid.*, Supplement, pp. 1540 and 1651, and *ibid.*, 1885, Supplement, p. 335.

of 1874
if 1874

prised in the Páñch Maháls should on and from the first day of May, 1885, be the same as the law in force in the district of Kaira, in the Bombay Presidency, and that the said territory should, on and from that day, cease to be a scheduled district under the 'Scheduled Districts Act, 1874, and the Laws Local Extent Act, 1874, It is hereby enacted as follows —

1. This Act may be called the Páñch Maháls Laws Act, 1885 Short title
2. (1) Save and except the enactments specified in the Schedule hereto annexed, all enactments which on the first day of May, 1885, are in force in the district of Kaira, and not in the Páñch Maháls, shall be deemed to come into force in the Páñch Maháls on that day Laws of Kaira to apply
- (2) All enactments which on that day are in force in the Páñch Maháls and not in the district of Kaira shall be deemed to be repealed on and from that day in the Páñch Maháls Other laws repealed
3. All proceedings commenced before any authority in the Páñch Maháls before the 1st day of May, 1885, and still pending on that day, shall be disposed of by such authority as the ²[Provincial Government] may direct, and, save as aforesaid, shall be carried on as if this Act had not been passed Pending proceedings
4. On and from the first day of May, 1885, the Páñch Maháls shall cease to be a scheduled district * * * * Territory to cease to be scheduled district.

THE SCHEDULE

ENACTMENTS EXCEPTED FROM THE OPERATION OF SECTION 2.

Acts of the Governor General in Council.

Number and year	Title	Extent of exception
'VIII of 1870	For the prevention of the murder of female infants	The whole
XXI of 1881	To amend the law providing for the relief of Thakurs in the districts of Broach and Kaira	The whole.

¹ Rep by the A O 1937

² Subs by the A O 1937 for "L G"

³ The words and figures "and in Part II of the First Schedule to the Scheduled Districts Act, 1874, and in the same Part of the Sixth Schedule to the Laws Local Extent Act, 1874, the words 'The Páñch Maháls' shall be repealed" were rep by the Amending Act, 1891 (12 of 1891)

⁴ See s. 2 of Bom Act 3 of 1897 which declares that Act 8 of 1870 shall be deemed to extend, and from the 21st December, 1870, to have extended, to the Presidency of Bombay.

(Schedule)

Telegraphs

[1885: Act XIII.]

Acts of the Governor of Bombay in Council

Number and year	Title	Extent of exception
V of 1862	For the preservation of the Bhagdari and Narwadari Tenures	The whole
V of 1879	To consolidate and amend the law relating to Revenue-officers and the land-revenue in the Presidency of Bombay	Section 85 ¹ [and sub-section (3) of section 58]

THE INDIAN TELEGRAPH ACT, 1885

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ACT No XIII of 1885 ¹

[22nd July, 1885]

An Act to amend the law relating to Telegraphs in India.

WHEREAS it is expedient to amend the law relating to telegraphs in India, It is hereby enacted as follows —

PART I.

PRELIMINARY.

Short title,
local extent
and com-
mencement

1. (1) This Act may be called the Indian Telegraph Act, 1885.
²[(2) It extends to ³~~all the Provinces of India~~, including the Sonthal Parganas and the Pargana of Siptu, and it applies also to—
⁴[(a) all British subjects domiciled in India wherever they may be,
 (b) all other British subjects within the Acceding States, and
 (c) all servants of Government, whether British subjects or not, within the territories of any Acceding State or other Indian State]]
 (3) It shall come into force on the first day of October, 1885.

2. [Repeal and savings] *Rep by the Repealing Act, 1938 (I of 1938), s 2 and Sch*

Definitions

3. In this Act, unless there is something repugnant in the subject or context,—

(1) "telegraph" means an electric, galvanic or magnetic telegraph, and includes appliances and apparatus for ⁵[making, transmitting or

¹ For Statement of Objects and Reasons, see Gazette of India, 1884, Pt. V, p. 481, for Report of the Select Committee, see *ibid*, 1885, Pt IV, p 192, and for Proceedings in Council, see *ibid*, 1884, Supplement, pp 1169 and 1296, and *ibid*., 1885, Supplement, p 1181.

This Act was declared to be in force in the Sonthal Parganas by the Sonthal Parganas Settlement Regulation (3 of 1872), s 3, in the Khondmals District by the Khondmals Laws Regulation, 1936 (4 of 1936), s 3 and Sch, and in the Angul District by the Angul Laws Regulation, 1936 (5 of 1936), s 3 and Sch. It was also partially extended to Berar by the Berar Laws Act, 1941 (4 of 1941)

² Subs by s 2 of the Indian Telegraph (Amendment) Act 1914 (7 of 1914), for the original sub-section

³ Subs by the A O 1948, for "the whole of British India".

⁴ Subs by the A O 1948, for the original clauses

⁵ Subs by s 3 of Act 7 of 1914 for "transmitting or making

(Part I.—Preliminary. Part II—Privileges and Powers of the Government)

receiving] telegraphic, telephonic or other communications by means of electricity, galvanism or magnetism

(2) "telegraph officer" means any person employed either permanently or temporarily in connection with a telegraph established, maintained or worked by ¹[the Central Government] or by a person licensed under this Act :

(3) "message" means any communication sent by telegraph, or given to a telegraph officer to be sent by telegraph or to be delivered.

(4) "telegraph line" means a wire or wires used for the purpose of a telegraph, with any casing, coating, tube or pipe enclosing the same, and any appliances and apparatus connected therewith for the purpose of fixing or insulating the same

(5) "post" means a post, pole, standard, stay, strut, or other above-ground contrivance for carrying, suspending or supporting a telegraph line.

(6) "telegraph authority" means the Director General of ²[Posts and Telegraphs,] and includes any officer empowered by him to perform all or any of the functions of the telegraph authority under this Act

(7) "local authority" means any municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by ¹[the Central or any Provincial Government] with, the control or management of any municipal or local fund

PART II.

PRIVILEGES AND POWERS OF THE GOVERNMENT

4 ³[(r)] Within ⁴[~~the Provinces~~ ^{India}], the ⁵[Central Government] shall have the exclusive privilege of establishing, maintaining and working telegraphs.

Exclusive privilege in respect of telegraphs, and power to grant licenses.

Provided that the ⁵[Central Government] may grant a license, on such conditions and in consideration of such payments as ⁶[it] thinks fit, to any person to establish, maintain or work a telegraph within any part of ⁴[~~the Provinces~~ ^{India}]:

⁵[Provided further that the ⁵[Central Government] may, by rules made under this Act and published in the ⁷[Official Gazette], permit, subject

¹ Subs by the A O 1937, for "the Govt"

² Subs for "Telegraphs" by the Indian Post Office and Telegraph (Amendment) Act, 1914 (14 of 1914), s 2.

³ S 4 was renumbered s 4 (r) and, the second proviso and sub-section (2) were added to that section by the Indian Telegraph (Amendment) Act, 1914 (7 of 1914),

s 4

⁴ Subs by the A O 1948, for "British India"

⁵ Subs by the A. O 1937, for "G. G. in C."

⁶ Subs by the A. O. 1937, for "he"

⁷ Subs by the A. O. 1937, for "Gazette of India".

(Part II —Privileges and Powers of the Government)

to such restrictions and conditions as ¹[it] thinks fit, the establishment, maintenance and working—

(a) of wireless telegraphs on ships within Indian territorial waters ²[and on aircraft within or above ³~~the Provinces~~], or Indian territorial waters], and *India*

(b) of telegraphs other than wireless telegraphs within any part of ⁴~~the Provinces~~. *India*

(2) The ⁴[Central Government] may, by notification in the ⁵[Official Gazette,] delegate to the telegraph authority all or any of ⁶[its] powers under the first proviso to sub-section (1).

The exercise by the telegraph authority of any power so delegated shall be subject to such restrictions and conditions as the ⁴[Central Government] may, by the notification, think fit to impose]

Power for Government to take possession of licensed telegraphs and to order interception of messages

5 (1) On the occurrence of any public emergency, or in the interest of the public safety, the ⁴[Central Government] or a ⁷~~Provincial~~ *State* Government], or any officer specially authorized in this behalf ⁸[by the Central or a ~~Provincial~~ Government], may—

(a) take temporary possession of any telegraph established, maintained or worked by any person licensed under this Act ; or

(b) order that any message or class of messages to or from any person or class of persons or relating to any particular subject brought for transmission by, or transmitted or received by, any telegraph, shall not be transmitted, or shall be intercepted or detained, or shall be disclosed to ⁹[the Government making the order] or an officer thereof mentioned in the order.

(2) If any doubt arises as to the existence of a public emergency, or whether any act done under sub-section (1) was in the interest of the public safety, ¹⁰[a certificate of the Central or, as the case may be, the Provincial Government] shall be conclusive proof on the point

Power to establish telegraph on land of Railway Company

6. Any Railway Company, on being required so to do by the ⁴[Central Government], shall permit the Government to establish and maintain a telegraph upon any part of the land of the Company, and shall give every reasonable facility for working the same

¹ Subs by the A O 1937, for " he "

² Ins by the Indian Telegraph (Amendment) Act, 1930 (27 of 1930)

³ Subs by the A O 1948, for " British India "

⁴ Subs. by the A O 1937, for " G G in C "

⁵ Subs by the A O 1937, for " Gazette of India "

⁶ Subs by the A O 1937, for " his "

⁷ Subs by the A O 1937, for " L G "

⁸ Subs by the A O 1937, for " by the G G in C "

⁹ Subs by the A O 1937, for " the Govt "

¹⁰ Subs by the A O 1937, for " a certificate signed by a Secretary to the G of I. or to the L G. "

(Part II —Privileges and Powers of the Government)

7. (1) The ¹[Central Government] may, from time to time, by notification in the ²[Official Gazette], make rules³ consistent with this Act for the conduct of all or any telegraphs established, maintained or worked by the Government or by persons licensed under this Act

Power to make rules for the conduct of telegraphs

(2) Rules under this section may provide for all or any of the following, among other matters, that is to say —

- (a) the rates at which, and the other conditions and restrictions subject to which, messages shall be transmitted ,
- (b) the precautions to be taken for preventing the improper interception or disclosure of messages ,
- (c) the period for which, and the conditions subject to which, telegrams and other documents belonging to, or being in the custody of, telegraph officers shall be preserved , and
- (d) the fees to be charged for searching for telegrams or other documents in the custody of any telegraph officer

(3) When making rules for the conduct of any telegraph established, maintained or worked by any person licensed under this Act, the ¹[Central Government] may, by the rules, prescribe fines for any breach of the same

Provided that the fines so prescribed shall not exceed the following limits, namely —

- (i) when the person licensed under this Act is punishable for the breach, one thousand rupees, and in the case of a continuing breach a further fine of two hundred rupees for every day after the first during the whole or any part of which the breach continues ,
- (ii) when a servant of the person so licensed, or any other person, is punishable for the breach, one-fourth of the amounts specified in clause (i)

8 The ¹[Central Government] may, at any time, revoke any license granted under section 4, on the breach of any of the conditions therein contained, or in default of payment of any consideration payable thereunder

Revocation of licenses

9. The ⁴[~~Crown~~ ^{Crown}] shall not be responsible for any loss or damage which may occur in consequence of any telegraph officer failing in his duty with respect to the receipt, transmission or delivery of any message ; and no such officer shall be responsible for any such loss or damage unless he causes the same negligently, maliciously or fraudulently

Crown not responsible for loss or damage.

¹ Subs by the A O 1937, for " G. G. in C. "

² Subs by the A O 1937, for " Gazette of India "

³ See the Indian Telegraph Rules, 1932 published in Gen R & O Supplementary, Vol III, p 106

⁴ Subs by the A O 1937, for " Secretary of State for India in Council "

(Part III —Powers to place Telegraph Lines and Posts)

PART III

POWERS TO PLACE TELEGRAPH LINES AND POSTS

Power for telegraph authority to place and maintain telegraph lines and posts

10. The telegraph authority may, from time to time, place and maintain a telegraph line under, over, along or across, and posts in or upon, any immoveable property

Provided that—

- (a) the telegraph authority shall not exercise the powers conferred by this section except for the purposes of a telegraph established or maintained by the ¹[Central Government], or to be so established or maintained ,
- (b) the ¹[Central Government] shall not acquire any right other than that of user only in the property under, over, along, across, in or upon which the telegraph authority places any telegraph line or post , and
- (c) except as hereinafter provided, the telegraph authority shall not exercise those powers in respect of any property vested in or under the control or management of any local authority, without the permission of that authority , and
- (d) in the exercise of the powers conferred by this section, the telegraph authority shall do as little damage as possible, and, when it has exercised those powers in respect of any property other than that referred to in clause (c), shall pay full compensation to all persons interested for any damage sustained by them by reason of the exercise of those powers

Power to enter on property in order to repair or remove telegraph lines or posts

11. The telegraph authority may, at any time, for the purpose of examining, repairing, altering or removing any telegraph line or post, enter on the property under, over, along, across, in or upon which the line or post has been placed.

Provisions applicable to Property vested in or under the Control or Management of Local Authorities

Power for local authority to give permission under section 10, clause (c), subject to conditions

12. Any permission given by a local authority under section 10, clause (c), may be given subject to such reasonable conditions as that authority thinks fit to impose, as to the payment of any expenses to which the authority will necessarily be put in consequence of the exercise of the powers conferred by that section, or as to the time or mode of execution of any work, or as to any other thing connected with or relative to any work undertaken by the telegraph authority under those powers

Power for local authority

13. When, under the foregoing provisions of this Act, a telegraph line or post has been placed by the telegraph authority under, over,

¹ Subs by the A O 1937, for " Govt "

(Part III —Powers to place Telegraph Lines and Posts)

along, across, in or upon any property vested in or under the control or management of a local authority, and the local authority, having regard to circumstances which have arisen since the telegraph line or post was so placed, considers it expedient that it should be removed or that its position should be altered, the local authority may require the telegraph authority to remove it or alter its position, as the case may be

ity to require removal or alteration of telegraph line or post

14. The telegraph authority may, for the purpose of exercising the power conferred upon it by this Act in respect of any property vested in or under the control or management of a local authority, alter the position thereunder on any pipe (not being a main) for the supply of gas or water, or of any drain (not being a main drain)

Power to alter position of gas or water pipes or drains

Provided that—

- (a) when the telegraph authority desires to alter the position of any such pipe or drain, it shall give reasonable notice of its intention to do so, specifying the time at which it will begin to do so, to the local authority, and, when the pipe or drain is not under the control of the local authority, to the person under whose control the pipe or drain is ,
- (b) a local authority or person receiving notice under clause (a) may send a person to superintend the work, and the telegraph authority shall execute the work to the reasonable satisfaction of the person so sent

15. (1) If any dispute arises between the telegraph authority and a local authority in consequence of the local authority refusing the permission referred to in section 10, clause (c), or prescribing any condition under section 12, or in consequence of the telegraph authority omitting to comply with a requisition made under section 13, or otherwise in respect of the exercise of the powers conferred by this Act, it shall be determined by such officer as the ¹[Central Government] may appoint either generally or specially in this behalf

Disputes between telegraph authority and local authority

(2) An appeal from the determination of the officer so appointed shall lie to the ¹[Central Government] and the order of the ¹[Central Government] shall be final

Provisions applicable to other Property.

16. (1) If the exercise of the powers mentioned in section 10 in respect of property referred to in clause (d) of that section is resisted or obstructed, the District Magistrate may, in his discretion, order that the telegraph authority shall be permitted to exercise them

Exercise of powers conferred by section 10, and disputes as to compensation, in case of property other

(2) If, after the making of an order under sub-section (1), any person resists the exercise of those powers, or, having control over the property,

¹ Subs by the A O 1937, for " L G "

(Part III —Powers to place Telegraph Lines and Posts)

than that
of a local
authority

does not give all facilities for their being exercised, he shall be deemed to have committed an offence under section 188 of the Indian Penal Code

XLV of 1860

(3) If any dispute arises concerning the sufficiency of the compensation to be paid under section 10, clause (d), it shall, on application for that purpose by either of the disputing parties to the District Judge within whose jurisdiction the property is situate, be determined by him

(4) If any dispute arises as to the persons entitled to receive compensation or as to the proportions in which the persons interested are entitled to share in it, the telegraph authority may pay into the Court of the District Judge such amount as he deems sufficient, or, where all the disputing parties have in writing admitted the amount tendered to be sufficient or the amount has been determined under sub-section (3), that amount, and the District Judge, after giving notice to the parties and hearing such of them as desire to be heard, shall determine the persons entitled to receive the compensation or, as the case may be, the proportions in which the persons interested are entitled to share in it

(5) Every determination of a dispute by a District Judge under sub-section (3) or sub-section (4) shall be final

Provided that nothing in this sub-section shall affect the right of any person to recover by suit the whole or any part of any compensation paid by the telegraph authority from the person who has received the same

Removal or
alteration of
telegraph
line or post
on property
other than
that of a
local author-
ity

17. (1) When, under the foregoing provisions of this Act, a telegraph line or post has been placed by the telegraph authority under, over, along, across, in or upon any property, not being property vested in or under the control or management of a local authority, and any person entitled to do so desires to deal with that property in such a manner as to render it necessary or convenient that the telegraph line or post should be removed to another part thereof or to a higher or lower level or altered in form, he may require the telegraph authority to remove or alter the line or post accordingly.

Provided that, if compensation has been paid under section 10, clause (d), he shall, when making the requisition, tender to the telegraph authority the amount requisite to defray the expense of the removal or alteration, or half of the amount paid as compensation, whichever may be the smaller sum

(2) If the telegraph authority omits to comply with the requisition, the person making it may apply to the District Magistrate within whose jurisdiction the property is situate to order the removal or alteration

(3) A District Magistrate receiving an application under sub-section (2) may, in his discretion, reject the same or make an order absolutely or

(Part III —Powers to place Telegraph Lines and Posts)

subject to conditions, for the removal of the telegraph line or post to any other part of the property or to a higher or lower level, or for the alteration of its form , and the order so made shall be final

Provisions applicable to all Property.

18. (1) If any tree standing or lying near a telegraph line interrupts, or is likely to interrupt, telegraphic communication, a Magistrate of the first or second class may, on the application of the telegraph authority, cause the tree to be removed or dealt with in such other way as he deems fit.

(2) When disposing of an application under sub-section (1), the Magistrate shall, in the case of any tree in existence before the telegraph line was placed, award to the persons interested in the tree such compensation as he thinks reasonable, and the award shall be final

19. Every telegraph line or post placed before the passing of this Act under, over, along, across, in or upon any property, for the purposes of a telegraph established or maintained by the ¹[Central Government], shall be deemed to have been placed in exercise of the powers conferred by, and after observance of all the requirements of, this Act.

²[19A. (1) Any person desiring to deal in the legal exercise of a right with any property in such a manner as is likely to cause damage to a telegraph line or post which has been duly placed in accordance with the provisions of this Act, or to interrupt or interfere with telegraphic communication, shall give not less than one month's notice in writing of the intended exercise of such right to the telegraph authority, or to any telegraph officer whom the telegraph authority may empower in this behalf

(2) If any such person without having complied with the provisions of sub-section (1) deals with any property in such a manner as is likely to cause damage to any telegraph line or post, or to interrupt or interfere with telegraphic communication, a Magistrate of the first or second class may, on the application of the telegraph authority, order such person to abstain from dealing with such property in such manner for a period not exceeding one month from the date of his order and forthwith to take such action with regard to such property as may be in the opinion of the Magistrate necessary to remedy or prevent such damage, interruption or interference during such period.

(3) A person dealing with any property in the manner referred to in sub-section (1) with the *bona fide* intention of averting imminent danger of personal injury to himself or any other human being shall be deemed to have complied with the provisions of the said sub-section

¹ Subs by the A O 1937, for " Govt "

² S 19A ins s 5 of the Indian Telegraph (Amendment) Act, 1914 (7 of 1914)

(Part III —Powers to place Telegraph Lines and Posts
Part IV —Penalties)

if he gives such notice of the intended exercise of the right as in the circumstances possible, or where no such previous notice can be given without incurring the imminent danger referred to above, if he forthwith gives notice of the actual exercise of such right to the authority or officer specified in the said sub-section]

Power to
confer upon
licensee
powers of
telegraph
authority
under this
Part

¹[19B The ²[Central Government] may, by notification in the ³[Official Gazette], confer upon any licensee under section 4, in respect of the extent of his license and subject to any conditions and restrictions which the ²[Central Government] may think fit to impose and to the provisions of this Part, all or any of the powers which the telegraph authority possesses under this Part with regard to a telegraph established or maintained by the Government or to be so established or maintained

Provided that the notice prescribed in section 19A shall always be given to the telegraph authority or officer empowered to receive notice under section 19A (1)]

PART IV.

PENALTIES

Establishing,
maintaining
or working
unauthorized
telegraph

⁴[20 (1) If any person establishes, maintains or works a telegraph within ~~the Provinces~~ ^{British India} in contravention of the Provisions of section 4 or otherwise than as permitted by rules made under that section, he shall be punished, if the telegraph is a wireless telegraph, with imprisonment which may extend to three years, or with fine, or with both, and in any other case, with a fine which may extend to one thousand rupees

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, offences under this section in respect of a wireless telegraph shall, V of 1898 for the purposes of the said Code, be bailable and noncognizable

(3) When any person is convicted of an offence punishable under this section, the Court before which he is convicted may direct that the telegraph in respect of which the offence has been committed, or any part of such telegraph, be forfeited to ~~His Majesty~~ ^{Govt}

Breach of
condition of
license

⁵[20A If the holder of a license granted under section 4 contravenes any condition contained in his license, he shall be punished with fine which

¹ S. 19B ins. by s. 5 of the Indian Telegraph (Amendment) Act, 1914 (7 of 1914).

² Subs. by the A. O. 1937, for "G. G. in C."

³ Subs. by the A. O. 1937, for "Gazette of India"

⁴ Subs. by s. 6 of Act 7 of 1914, for the original section

⁵ Subs. by the A. O. 1948, for "British India"

⁶ Ins. by s. 7 of Act 7 of 1914

(Part IV —Penalties)

may extend to one thousand rupees, and with a further fine which may extend to five hundred rupees for every week during which the breach of the condition continues]

21 If any person, knowing or having reason to believe that a telegraph has been established or is maintained or worked, in contravention of this Act, transmits or receives any message by such telegraph, or performs any service incidental thereto, or delivers any message for transmission by such telegraph, or accepts delivery of any message sent thereby, he shall be punished with fine which may extend to fifty rupees

Using unauthorized telegraphs

22. If a Railway Company or an officer of a Railway Company neglects or refuses to comply with the provisions of section 6, it or he shall be punished with fine which may extend to one thousand rupees for every day during which the neglect or refusal continues

Opposing establishment of telegraphs on railway land

23 If any person—

- (a) without permission of competent authority, enters the signal-room of a telegraph office of the Government, or of a person licensed under this Act, or
- (b) enters a fenced enclosure round such a telegraph office in contravention of any rule or notice not to do so, or
- (c) refuses to quit such room or enclosure on being requested to do so by any officer or servant employed therein, or
- (d) wilfully obstructs or impedes any such officer or servant in the performance of his duty,

Intrusion into signal-room, trespass in telegraph office or obstruction

he shall be punished with fine which may extend to five hundred rupees

24 If any person does any of the acts mentioned in section 23 with the intention of unlawfully learning the contents of any message, or of committing any offence punishable under this Act, he may (in addition to the fine with which he is punishable under section 23) be punished with imprisonment for a term which may extend to one year.

Unlawfully attempting to learn contents of messages

25 If any person, intending—

- (a) to prevent or obstruct the transmission or delivery of any message, or
- (b) to intercept or to acquaint himself with the contents of any message, or
- (c) to commit mischief,

Intentionally damaging or tampering with telegraphs

damages, removes, tampers with or touches any battery, machinery, telegraph line, post or other thing whatever, being part of or used in or about any telegraph or in the working thereof,

he shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both

¹[25A If, in any case not provided for by section 25, any person deals with any property and thereby wilfully or negligently damages any telegraph line or post duly placed on such property in accordance with the provisions

Injury to or interference with a telegraph line or post

¹ Ins. by s 8 of the Indian Telegraph (Amendment) Act, 1914 (7 of 1914)

(Part IV —Penalties)

of this Act, he shall be liable to pay the telegraph authority such expenses (if any) as may be incurred in making good such damage, and shall also, if the telegraphic communication is by reason of the damage so caused interrupted, be punishable with a fine which may extend to one thousand rupees

Provided that the provisions of this section shall not apply where such damage or interruption is caused by a person dealing with any property in the legal exercise of a right if he has complied with the provisions of section 19A(r)]

Telegraph officer or other official making away with or altering or unlawfully intercepting or disclosing messages, or divulging purport of signals

26 If any telegraph officer, or any person, not being a telegraph officer but having official duties connected with any office which is used as a telegraph office,—

(a) wilfully secretes, makes away with or alters any message which he has received for transmission or delivery, or

(b) wilfully and otherwise than in obedience to an order of the ¹[Central Government] or of a ²[~~Provincial~~ ^{State} Government], or of an officer specially authorized ³[by the Central or a ~~Provincial~~ ^{State} Government] to make the order, omits to transmit, or intercepts or detains, any message or any part thereof, or otherwise than in pursuance of his official duty or in obedience to the direction of a competent Court, discloses the contents or any part of the contents of any message, to any person not entitled to receive the same, or

(c) divulges the purport of any telegraphic signal to any person not entitled to become acquainted with the same,

he shall be punished with imprisonment for a term which may extend to three years or with fine, or with both

Telegraph officer fraudulently sending messages without payment

27 If any telegraph officer transmits by telegraph any message on which the charge prescribed by the ⁴[Central Government], or by a person licensed under this Act, as the case may be, has not been paid, intending thereby to defraud the ⁴[Central Government] or that person, he shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

Misconduct.

28 If any telegraph officer, or any person not being a telegraph officer but having official duties connected with any office which is used as a telegraph office, is guilty of any act of drunkenness, carelessness or other misconduct whereby the correct transmission or the delivery of any message is impeded or delayed, or if any telegraph officer loiters or delays in the transmission or delivery of any message, he shall be punished with imprisonment for a term which may extend to three months or with fine which may extend to

¹ Subs. by the A O 1937, for "G G in C"

² Subs by the A O 1937, for "L. G."

³ Subs by the A O 1937, for "by the G G in C."

⁴ Subs by the A O 1937, for "Govt"

(Part IV —Penalties Part V —Supplemental Provisions)

three months, or with fine which may extend to one hundred rupees, or with both.

29 If any person transmits or causes to be transmitted by telegraph a message which he knows to be false or fabricated, he shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both

Sending
fabricated
message

¹[29A If any person, without due authority,—

Penalty

(a) makes or issues any document of a nature reasonably calculated to cause it to be believed that the document has been issued by, or under the authority of, the Director General of ²[Posts and Telegraphs], or

(b) makes on any document any mark in imitation of, or similar to, or purporting to be, any stamp or mark of any telegraph office under the Director General of ²[Posts and Telegraphs], or a mark of a nature reasonably calculated to cause it to be believed that the document so marked has been issued by, or under the authority of, the Director General of ²[Posts and Telegraphs],

he shall be punished with fine which may extend to fifty rupees]

30 If any person fraudulently retains, or wilfully secretes, makes away with or detains a message which ought to have been delivered to some other person, or, being required by a telegraph officer to deliver up any such message, neglects or refuses to do so, he shall be punished with imprisonment for a term which may extend to two years, or with fine, or with both

Retaining
a message
delivered by
mistake

1860 31. A telegraph officer shall be deemed a public servant within the meaning of sections 161, 162, 163, 164 and 165 of the Indian Penal Code, and in the definition of "legal remuneration" contained in the said section 161, the word "Government" shall, for the purposes of this Act, be deemed to include a person licensed under this Act

Bribery

32. Whoever attempts to commit any offence punishable under this Act shall be punished with the punishment herein provided for the offence

Attempts to
commit
offences

PART V

SUPPLEMENTAL PROVISIONS

33. (1) Whenever it appears to the ^{State} Provincial Government that any act causing or likely to cause wrongful damage to any telegraph is repeatedly

Power to
employ addi-
tional police

¹ Ins by s 9 of the Indian Telegraph (Amendment) Act, 1914 (7 of 1914)

² Subs for "Telegraphs" by s 2 of the Indian Post Office and Telegraph (Amendment) Act, 1914 (14 of 1914)

³ Subs by the A O 1937, for "I. G."

(Part V —Supplemental Provisions)

in places
where mis-
chief to
telegraphs is
repeatedly
committed

and maliciously committed in any place, and that the employment of an additional police-force in that place is thereby rendered necessary, the ¹[~~Provincial~~ *State* Government] may send such additional police-force as it thinks fit to the place, and employ the same therein so long as, in the opinion of that Government, the necessity of doing so continues

(2) The inhabitants of the place shall be charged with the cost of the additional police-force, and the District Magistrate shall, subject to the orders of the ¹[~~Provincial~~ *State* Government], assess the proportion in which the cost shall be paid by the inhabitants according to his judgment of their respective means

(3) All moneys payable under sub-section (2) shall be recoverable either under the warrant of a Magistrate by distress and sale of the moveable property of the defaulter within the local limits of his jurisdiction, or by suit in any competent Court.

(4) The ¹[Provincial Government] may, by order in writing, define the limits of any place for the purposes of this section

Application
of Act to
Presidency-
towns

²[34.(1) This Act, in its application to the Presidency-towns, shall be read as if for the words " District Magistrate " in section 16, sub-section (1), and section 17, sub-sections (2) and (3), for the words " Magistrate of the first or second class " in section 18, sub-section (1) ³[and section 19A, sub-section (2)] and for the word " Magistrate " in section 18, sub-section (2), there had been enacted the words " Commissioner of Police, " and for the words " District Judge, " in section 16, sub-sections (3), (4) and (5), the words " Chief Judge of the Court of Small Causes "]

* * * * *

(3) The fee in respect of an application to the Chief Judge of a Presidency Court of Small Causes under sub-section (3) of section 16 shall be the same as would be payable under the Court-fees Act, 1870, in respect of such an application to a District Judge beyond the limits of a Presidency-town, and fees for summonses and other processes in proceedings before the Chief Judge under sub-section (3) or sub-section (4) of that section shall be payable according to the scale set forth in the fourth schedule to the Presidency Small Cause Courts Act, 1882]

XV of 188

see 35 omitted by 14/51.

¹ Subs by the A. O. 1937, for " L G "

² Ins by the Indian Telegraphs (Presidency-towns) Act, 1888 (11 of 1888)

³ Ins by s 10 of the Indian Telegraph (Amendment) Act, 1914 (7 of 1914)

⁴ Sub-section (2) rep by the A. O. 1937

THE LAND ACQUISITION (MINES) ACT, 1885.

CONTENTS

SECTIONS

- 1 Short title, commencement and local extent
- 2 Saving for mineral rights of the Crown
- 3 Declaration that mines are not needed
4. Notice to be given before working mines lying under land
- 5 Power to prevent or restrict working
- 6 Mode of determining persons interested and amount of compensation
- 7 If Provincial Government does not offer to pay compensation, mines may be worked in a proper manner.
- 8 Mining communications
- 9 Provincial Government to pay compensation for injury done to mines ;
- 10 and also for injury arising from any airway or other work.
11. Power to officer of Provincial Government to enter and inspect the working of mines.
- 12 Penalty for refusal to allow inspection
- 13 If mines worked contrary to provisions of this Act, Provincial Government may require means to be adopted for safety of land acquired
- 14 Construction of Act when land acquired has been transferred to a local authority or Company
- 15 [*Repealed*]
- 16 Definition of local authority and Company
- 17 This Act to be read with Land Acquisition Act, 1870.

ACT No XVIII OF 1885 ¹

[16th October, 1885]

An Act to provide for cases in which Mines or Minerals are situate under land which it is desired to acquire under the Land Acquisition Act, 1870 ²

WHEREAS it is expedient to provide for cases in which mines or minerals

¹ For the Statement of Objects and Reasons, see Gazette of India, 1885, Pt V, p 145, for Report of the Select Committee, see *ibid*, Pt IV, p 264, and for Proceedings in Council, see *ibid*, Supplement, pp 336 and 1520, and *ibid*, Extra Supplement, dated 14th March, 1885, p 41

This Act has been declared to be in force in the Sonthál Parganas by the Sonthál Parganas Settlement Regulation (3 of 1872), s 3, in the Khondmals District by the Khondmals Laws Regulation, 1936 (4 of 1936), s 3 and Sch, and in the Angul District by the Angul Laws Regulation, 1936 (5 of 1936), s 3 and Sch

² See now the Land Acquisition Act, 1894 (1 of 1894).

are situate under land which it is desired to acquire under the Land Acquisition Act, 1870¹, It is hereby enacted as follows —

X of 1870

Short title,
commence
ment and
local extent

1 (1) This Act may be called the Land Acquisition (Mines) Act, 1885 ; and

(2) It shall come into force at once

(3) It extends in the first instance to the ²[Provinces of Madras, West-Bengal, Bihar, Assam and Orissa], but ~~any other~~ ³[Provincial Government] may, from time to time, by notification in the Official Gazette, extend this Act to the whole or any specified part of the territories under its administration

Saving for
mineral
rights of the
Crown

Declaration
that mines
are not
needed

2 Except as expressly provided by this Act, nothing in this Act shall affect the right of ~~the Crown~~ ⁴to any mines or minerals

3 (1) When the ~~Provincial Government~~ ⁵ makes a declaration under section 6 of the Land Acquisition Act, 1870,⁶ that land is needed for a public purpose or for a Company, it may, if it thinks fit, insert in the declaration a statement that the mines of coal, iron-stone, slate or other minerals lying under the land or any particular portion of the land, except only such parts of the mines or minerals as it may be necessary to dig or carry away or use in the construction of the work for the purpose of which the land is being acquired, are not needed X of 1870

(2) When a statement as aforesaid has not been inserted in the declaration made in respect of any land under section 6 of the Land Acquisition Act, 1870,⁶ and the Collector is of opinion that the provisions of this Act ought to be applied to the land, he may abstain from tendering compensation under section 11⁶ of the said Land Acquisition Act in respect of the mines, and may— X of 1870.

(a) when he makes an award under section 14⁶ of that Act, insert such a statement in his award ,

(b) when he makes a reference to the Court under section 15⁷ of that Act, insert such a statement in his reference , or

(c) when he takes possession of the land under section 17⁸ of that Act, publish such a statement in such manner as the ⁹[Provincial Government] may, from time to time, prescribe.

(3) If any such statement is inserted in the declaration, award or reference, or published as aforesaid, the mines of coal, iron-stone, slate or other

¹ See now the Land Acquisition Act, 1894 (1 of 1894)

² Subs by the A O 1948, for the original words

³ Subs by the A O 1937, for "L G"

⁴ Subs by the A O 1937, for "the Govt"

⁵ See now s 6 of the Land Acquisition Act, 1894 (1 of 1894)

⁶ See now s 11, *ibid*

⁷ See now s 19, *ibid*

⁸ See now s 17, *ibid*

⁹ Subs by the A O 1937, for the words "L G", which had been subs for the words "G G in C" by s 2 and Sch I of the Devolution Act, 1920 (38 of 1920)

minerals under the land or portion of the land specified in the statement, except as aforesaid, shall not vest in ¹[the Crown] when the land so vests under the said Act

4 If the person for the time being immediately entitled to work or get any mines or minerals lying under any land so acquired is desirous of working or getting the same, he shall give the ²[~~Provincial~~ *appropriate* Government] notice in writing of his intention so to do sixty days before the commencement of working

Notice to be given before working mines lying under land

5 (1) At any time or times after the receipt of a notice under the last foregoing section and whether before or after the expiration of the said period of sixty days, the ²[~~Provincial~~ *appropriate* Government] may cause the mines or minerals to be inspected by a person appointed by it for the purpose, and

Power to prevent or restrict working

(2) If it appears to the ²[~~Provincial~~ *appropriate* Government] that the working or getting of the mines or minerals, or any part thereof, is likely to cause damage to the surface of the land or any works thereon, the ²[~~Provincial~~ *appropriate* Government] may publish * * * a declaration of its willingness, either—

(a) to pay compensation for the mines or minerals still unworked or ungotten, or that part thereof, to all persons having an interest in the same, or

(b) to pay compensation to all such persons in consideration of those mines or minerals, or that part thereof, being worked or gotten in such manner and subject to such restrictions as the ²[~~Provincial~~ *appropriate* Government] may in its declaration specify

(3) If the declaration mentioned in case (a) is made, then those mines or minerals, or that part thereof, shall not thereafter be worked or gotten by any person.

(4) If the declaration mentioned in case (b) is made, then those mines or minerals, or that part thereof, shall not thereafter be worked or gotten by any person save in the manner and subject to the restrictions specified by the ²[~~Provincial~~ *appropriate* Government].

⁴[(5) Every declaration made under this section shall be published in such manner as the ²[~~Provincial~~ *appropriate* Government] may direct]

6 When the working or getting of any mines or minerals has been prevented or restricted under section 5, the persons interested in those mines or minerals and the amounts of compensation payable to them respectively shall, subject to all necessary modifications, be ascertained in the manner provided

Mode of determining persons interested and amount

¹ Subs by the A O 1937, for "the Govt"

² Subs by the A O 1937, for "L G"

³ The words "in such manner as the G G in C may, from time to time, direct" rep by s 2 and Sch I of the Devolution Act, 1920 (38 of 1920)

⁴ Ins, *ibid*

of compensa-
tion.

by the Land Acquisition Act, 1870,¹ for ascertaining the persons interested in the land to be acquired under that Act, and the amounts of compensation payable to them, respectively

If Provincial
Government
does not
offer to pay
compensa-
tion, mines
may be work-
ed in a pro-
per manner

7 (1) If before the expiration of the said sixty days the ²[~~Provincial~~ Government] does not publish a declaration as provided in section 5, the owner, lessee or occupier of the mines may, unless and until such a declaration is subsequently made, work the mines or any part thereof in a manner proper and necessary for the beneficial working thereof, and according to the usual manner of working such mines in the local area where the same are situate

(2) If any damage or obstruction is caused to the surface of the land or any works thereon by improper working of the mines, the owner, lessee or occupier of the mines shall at once, at his own expense, repair the damage or remove the obstruction, as the case may require

(3) If the repair or removal is not at once effected, or, if the ²[~~Provincial~~ Government] so thinks fit, without waiting for the same to be effected by the owner, lessee or occupier, the ²[~~Provincial~~ Government] may execute the same and recover from the owner, lessee or occupier the expense occasioned thereby

Mining com-
munications

8. If the working of any mines is prevented or restricted under section 5, the respective owners, lessees and occupiers of the mines, if their mines extend so as to lie on both sides of the mines the working of which is prevented or restricted, may cut and make such and so many airways, headways, gateways or water-levels through the mines, measures or strata, the working whereof is prevented or restricted, as may be requisite to enable them to ventilate, drain and work their said mines, but no such airway, headway, gateway or water-level shall be of greater dimensions or section than may be prescribed by the ³[~~Provincial~~ Government] in this behalf, and, where no dimensions are so prescribed, not greater than eight feet wide and eight feet high, nor shall the same be cut or made upon any part of the surface or works, or so as to injure the same, or to interfere with the use thereof.

Provincial
Government
to pay com-
pensation for
injury done
to mines ;

9 The ²[~~Provincial~~ Government] shall, from time to time, pay to the owner, lessee or occupier of any such mines extending so as to lie on both sides of the mines, the working of which is prevented or restricted, all such additional expenses and losses as may be incurred by him by reason of the severance of the lands lying over those mines or of the continuous working of those mines being interrupted as aforesaid, or by reason of the same being worked in such manner and under such restrictions as not to prejudice or injure the surface or works, and for any minerals not acquired by the ²[~~Provincial~~ Government] which cannot be obtained by reason of the action

¹ See now the Land Acquisition Act, 1894 (1 of 1894)

² Subs by the A O 1937, for "L G"

³ Subs by the A O 1937, for the words "L G", which had been subs for the words "G G in C" by s 2 and Sch I of the Devolution Act, 1920 (38 of 1920)

taken under the foregoing sections, and if any dispute or question arises between the ¹[~~Provincial~~ Government] and the owner, lessee or occupier as aforesaid, touching the amount of those losses or expenses, the same shall be settled as nearly as may be in the manner provided for the settlement of questions touching the amount of compensation payable under the Land Acquisition Act, 1870 ²

10 If any loss or damage is sustained by the owner or occupier of the lands lying over any such mines, the working whereof has been so prevented or restricted as aforesaid (and not being the owner, lessee or occupier of those mines), by reason of the making of any such airway or other works as aforesaid, which or any like work it would not have been necessary to make but for the working of the mines having been so prevented or restricted as aforesaid, the ¹[~~Provincial~~ Government] shall pay full compensation to that owner or occupier of the surface lands for the loss or damage so sustained by him and also for injury arising from any airway or other work

11 For better ascertaining whether any mines lying under land acquired in accordance with the provisions of this Act are being worked, or have been worked, or are likely to be worked so as to damage the land or the works thereon, an officer appointed for this purpose by the ¹[~~Provincial~~ Government] may, after giving twenty-four hours' notice in writing, enter into and return from any such mines or the works connected therewith, and for that purpose the officer so appointed may make use of any apparatus or machinery belonging to the owner, lessee or occupier of the mines, and use all necessary means for discovering the distance from any part of the land acquired to the parts of the mines which have been, are being or are about to be worked Power to officer of Provincial Government to enter and inspect the working of mines

12 If any owner, lessee or occupier of any such mines or works refuses to allow any officer appointed by the ¹[~~Provincial~~ Government] for that purpose to enter into and inspect any such mines or works in manner aforesaid, he shall be punished with fine which may extend to two hundred rupees Penalty for refusal to allow inspection

13. If it appears that any such mines have been worked contrary to the provisions of this Act, the ¹[~~Provincial~~ Government] may, if it thinks fit, give notice to the owner, lessee or occupier thereof to construct such works and to adopt such means as may be necessary or proper for making safe the land acquired, and the works thereon, and preventing injury thereto, and if, after such notice, any such owner, lessee or occupier does not forthwith proceed to construct the works necessary for making safe the land acquired and the works thereon, the ¹[~~Provincial~~ Government] may itself construct the works and recover the expense thereof from the owner, lessee or occupier If mines worked contrary to provisions of this Act, Provincial Government may require means to be adopted for safety of land acquired.

14. When a statement under section 3 has been made regarding any land, and the land has been acquired by the Government, and has been transferred to, or has vested, by operation of law, in a local authority or Construction of Act when land acquired has been

¹ Subs by the A O 1937, for "L G"

² See now the Land Acquisition Act, 1894 (1 of 1894)

transferred
to a local
authority or
Company

Company, then sections 4 to 13, both inclusive, shall be read as if for the words "the ^{affiliated} Provincial Government]", wherever they occur in those sections ²[except in section 5, sub-section (5), and section 8,] the words "the local authority or Company, as the case may be, which has acquired the land," were substituted

15. [Pending cases] Rep by the Repealing and Amending Act 1937 (XX of 1937), s 3 and Sch II

Definition of
local authority
and Company

16. In this Act—

(a) "local authority" means any municipal committee, district board, body of port commissioners or other authority legally entitled to or entrusted by the Government with, the control or management of any municipal or local fund, and

(b) "Company" means a company registered under any of the enactments relating to Companies from time to time in force in ^{part} ~~the Province~~ ^{the Provinces}, or formed in pursuance of an Act of Parliament or by Royal Charter or Letters Patent

This Act to
be read with
Land Acquisition
Act, 1870

17. This Act shall, for the purposes of all enactments for the time being in force, be read with and taken as part of the Land Acquisition Act, X of 1870

(c) ¹⁸⁷⁰ ~~affiliated~~ Government means, in relation to acquisition of land for the purposes of the union, the central Govt. and, in relation to acquisition of land for any other purposes, the State Government

THE MIRZAPUR STONE MAHAL ACT, 1886

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¹ Subs by the A O 1937, for "L G"

² Ins by s 2 and Sch I of the Devolution Act, 1920 (38 of 1920)

³ Subs by the A O 1948 for "British India"

⁴ See now the Land Acquisition Act, 1894 (1 of 1894).

(Preliminary)

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THE SCHEDULE —LANDS EXCLUDED FROM THE AREA COMPRISED IN THE
DISTRICT OF MIRZAPUR

ACT No V OF 1886¹

[29th January, 1886.]

An Act to declare and amend the Law relating to the Stone Mahal in the District of Mirzapur in the ²North-Western Provinces

WHEREAS it is expedient to declare and amend the Law relating to the Stone Mahal in the District of Mirzapur in the ²North-Western Provinces, It is hereby enacted as follows —

Preliminary

1. (1) This Act may be called the Mirzapur Stone Mahal Act, 1886, Short title
and com-
mencement

¹ For Statement of Objects and Reasons, see Gazette of India, 1885, Pt V, p 285, for Proceedings in Council, see *ibid*, Supplement, pp 1491, 1524, and *ibid*, 1886, Supplement, p 225

² Now the U P

(Preliminary Rights of the Provincial Government and the Public)

(2) It shall come into force on such ¹day as the ²~~Provincial~~ ^{State} Government], by notification in the Official Gazette, appoints

2. [*Repeal of Bengal Regulation II of 1800*] *Rep by the Amending Act, 1891 (XII of 1891), s 2 and Sch I*

Definitions

3. In this Act, unless there is something repugnant in the subject or context,—

- (1) "the district" means the whole of the area comprised in the district of Mirzapur as constituted at the time of the passing of this Act except the lands described in the schedule to this Act
- (2) "Collector" means the Collector of the Mirzapur District, and includes an Assistant Collector of the first class empowered by him to perform any of the functions of the Collector under this Act :
- (3) "Commissioner" means the Commissioner of the Benares Division
- (4) "quarry" means to take from the surface as well as to extract from a quarry .
- (6) "transport" means to remove from one place to another within the district .
- (7) "proprietor" includes an assignee of, land-revenue and any person claiming under a proprietor or exercising any of the rights of a proprietor

Rights of the Provincial Government and the Public

4. The ^{State}~~Provincial~~ Government] is entitled to levy duty on all stone quarried in the district.

Right of the
Provincial
Government
to levy duty
Prohibition
of levy of
duty by pro-
prietors

5. No proprietor of any land in any part of the district is entitled to impose any prohibition or restriction, or to demand or receive any sum by way of rent, premium, duty or price, in respect of the opening of a quarry, or the quarrying of stone, in the land, or in respect of the storing of stone at the quarry or the transport of stone over the land, or, save as may be provided by rules made under this Act, to receive from any person any compensation whatever in respect of any of the matters aforesaid

Right of the

6. (1) Subject to the rules made under this Act, any person is entitled

¹ The 1st May, 1889—see North-Western Provinces and Oudh Gazette, 1889, Pt. I, p 171

² Subs by the A O 1937, for "L G"

³ Sub-section (3) rep by the Amending Act, 1891 (12 of 1891), s 2 and Sch I

⁴ Clause (4) containing the definition of "Board" rep by the U P Board of Revenue Act, 1922 (U P 12 of 1922), s 2 and Sch

⁵ Subs by the A O 1937, for "Govt"

(Rights of the Provincial Government and the Public —Rules.)

to open a quarry, or quarry stone, in any land in any part of the district, and to store the stone at the quarry, and to transport it over any land public to quarry stone

(2) A person may, so far as the rules made under this Act permit, acquire an exclusive right to open a quarry, or quarry stone, within certain local limits in any part of the district, and may retain the right so long as those rules permit.

(3) If a dispute as to the right referred to in sub-section (1), to open a quarry, or quarry stone, in any land, or as to the existence of or mode of exercising an exclusive right referred to in sub-section (2), to open a quarry or quarry stone, within certain local limits, arises between any persons, or if a dispute as to the right to store stone on, or transport stone over, any land arises between the person claiming to store or transport the stone and the proprietor of the land, it shall, on application for that purpose by either of the disputing parties to the Collector, be decided by him

(4) A Civil Court shall not take cognizance of any such dispute or in any suit or proceeding whatever make any decree or order whereby any party to the dispute may be bound with respect to the subject-matter thereof either directly or indirectly.

Rules

7 (1) The ^{state} ~~Provincial~~ Government may, from time to time, make ^{Power to make rules} rules² consistent with this Act to regulate within the whole or any specified part of the district all or any of the following matters :—

- (a) the quarrying of stone, and the places where stone may be quarried ;
- (b) conflicting claims to exercise the right of opening a quarry or quarrying stone ;
- (c) the conditions on the fulfilment of which a person is to acquire an exclusive right of opening a quarry, or quarrying stone, within certain local limits, and how that right may cease to exist ;
- (d) the compensation to be paid for injury caused to crops or arable land by the quarrying, storing or transport of stone, and the authority by which the compensation is to be determined ;
- (e) the transport of stone ,
- (f) the storing of stone ;
- (g) the classification of stones, the rate or rates of duty to be paid in respect of each class of stone to the ³ ~~Provincial~~ Government or to a farmer to whom the ³ ~~Provincial~~ Government has

¹ Subs by the A O 1937, for "L G"

² For rules see the U P Local Rules and Orders

³ Subs by the A O 1937, for "Govt"

(Rules Offences)

leased the duties leviable thereon, and the time when, the place where and the persons by whom the duty is to be paid,

- (h) the exemptions from, or reductions of, duty to be allowed, the conditions to attach to those exemptions or reductions, and the consequences to ensue on the breach of any of those conditions,
- (i) the custody and disposal of stone confiscated or seized under this Act, and,
- (j) generally, for carrying out the purposes of this Act.

(2) In making a rule under this section the ^{State} ~~Provincial~~ Government may direct that a breach of it shall be punishable with fine which may extend to one hundred rupees, and, when the breach is a continuing breach, with a further fine which may extend to ten rupees for every day after the first during which the breach continues.

Procedure
for making
rules

8 (1) The ^{State} ~~Provincial~~ Government shall, before making any rules under section 7, publish a draft of the proposed rules for the information of persons interested

^{State} (2) The publication shall be made in such manner as in the opinion of the ~~Provincial~~ Government is sufficient

(3) A notice shall be published with the draft specifying a date at or after which the draft will be taken into consideration

(4) The ^{State} ~~Provincial~~ Government shall, before making the rules, receive and consider any objection or suggestion which is made by any person with respect to the draft before the date so specified

Publication
of rules

9 Every rule made under section 7 shall be published in the Official Gazette in English and in such other language or languages as the ^{State} ~~Provincial~~ Government directs, and that publication shall be conclusive proof that the rule has been made as required by section 8.

Deferred
operation of
rules altering
duty

10 If a rule made under section 7, sub-section (1), clause (g), alters the rate of duty to be paid in respect of any class of stone, it shall not have effect till the expiration of one year from the date on which it is published

Offences

Penalties for
evasion of
duty

11 If any person evades, or attempts to evade, or abets the evasion of, the payment of any duty payable under a rule made under section 7, sub-section (1), clause (g), he shall be punished with fine which may extend to two hundred rupees and twenty times the duty payable on the stone in respect of which the offence was committed, and the Court convicting him may further order the confiscation of the stone

Burden of
proof as to
payment of
duty

12. The burden of proving that duty has been paid on stone in respect of which a prosecution for an offence under section 11 has been instituted shall lie on the accused person

¹ Subs by the A O 1937, for "L G"

(Offences Arrest, Seizure and Search)

13 A prosecution for an offence under section 11 or against a rule made under section 7 shall not be instituted after the expiration of six months from the commission of the offence Limitation for prosecutions

14 Nothing in this Act shall prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence under section 11 or against a rule made under section 7, or from being liable under that other law to any other or higher punishment or penalty than that provided by section 11 or a rule made under section 7. Saving of prosecutions under other laws

Provided that a person shall not be punished twice for the same offence

Arrest, Seizure and Search

15 (1) Any officer whom the Collector, with the previous sanction of the Commissioner, may empower in this behalf, may— Powers of officers

(a) proceed, in respect of an offence under section 11 or against a rule made under section 7 which in his presence a person commits or is accused of committing, in the same manner as a Police-officer may proceed, under section 57 of the Code of Criminal Procedure, 1882,¹ in respect of a non-cognizable offence which in his presence a person commits or is accused of committing, and

(b) seize any stone in respect of which he has reason to believe that an offence under section 11 or against a rule made under section 7 has been committed, and, if the stone is being transported, use, for the removal thereof to the nearest place appointed for the custody of stone seized under this Act, any animals and conveyances used in transporting it

(2) The powers conferred by this section may be exercised as well beyond as within the limits of the district, and if in the exercise of those powers a person is arrested or stone is seized beyond those limits, then, notwithstanding anything in this Act, the person arrested shall be liable to be dealt with, and the stone seized to be disposed of, in the same manner as if he had been arrested or it had been seized within those limits

16. (1) A Magistrate may issue his warrant for the search, after sunrise and before sunset, of any building, vessel or place in which he has reason to believe that stone in respect of which an offence under section 11 or against a rule made under section 7 has been committed is kept or concealed, and for the seizure of any stone found there. Search-warrants

(2) The provisions of the Code of Criminal Procedure, 1882,² relating to searches under that Code shall, so far as the same are applicable, apply to searches under this section

¹ See now the same section of the Code of Criminal Procedure, 1898 (5 of 1898)

² See now ss 101 to 103 of the Code of Criminal Procedure, 1898 (5 of 1898)

X of 1882

X of 1882.

(Recovery of Duty Appeal and Revision Miscellaneous)

Recovery of Duty

Recovery of duty

17. An arrear of duty payable to the ^{State}~~Provincial~~ Government] under a rule made under section 7, sub-section (r), clause (g), and an arrear due from a farmer of duties payable on stone, may be recovered from the person primarily liable to pay the same to the ^{State}~~Provincial~~ Government], or from his surety (if any), as if it were an arrear of land-revenue¹

Appeal and Revision

Appeal and revision

18. (1) Decisions and orders passed under this Act or any rule thereunder by an Assistant Collector, whether as Collector or otherwise, shall be appealable to the Collector of the Mirzapur District in the manner provided by the law for the time being in force in the district respecting appeals from the orders of an Assistant Collector to the Collector in matters pertaining to land-revenue

(2) Decisions and orders passed by the Collector of the Mirzapur District under this Act or any rule thereunder shall be appealable to the Commissioner in the manner provided by the law aforesaid respecting appeals from the orders of the Collector to the Commissioner

(3) The ~~Tribunal to be constituted under section 296 (2) of the Government of India Act, 1935]~~ may revise any decision or order passed under this Act or any rule thereunder by an Assistant Collector, whether as Collector or otherwise, or by the Collector of the Mirzapur District, or under sub-section (2) by the Commissioner ^{26 Geo 5, c 2}

Miscellaneous

19. [Saving of existing rates of duty] *Rep by the Amending Act, 1891 (XII of 1891)*

Exemption of the inhabitants of the hills

20 (1) Notwithstanding anything hereinbefore contained, but subject to any rules which the ^{State}~~Provincial~~ Government] may from time to time make to regulate the enjoyment of the privilege hereby conferred, the inhabitants of the tract south of the Vindhya range of hills shall be exempt from the payment of duty on stones quarried by them within the limits of that tract for their own use within those limits.

(2) The ^{State}~~Provincial~~ Government] may, from time to time, by notification in the Official Gazette, define the limits⁵ of the said tract for the purposes of this section.

¹ Subs. by the A O 1937, for "Govt"

² As to recovery of arrears of land-revenue in the U P see ss 146 to 150 of the U P Land-revenue Act, 1901 (U P 3 of 1901)

³ Subs by the A O 1937, for the words "Local Government" which had been subs for the word "Board" by the U P Board of Revenue Act, 1922 (U P, 12 of 1922), s 2 and Sch

⁴ Subs by the A O 1937, for "L G"

⁵ For notification defining the limits of the tract, see U P Local Rules and Orders

(Schedule)

1886: Act VI.] *Births, Deaths and Marriages Registration*

THE SCHEDULE

LANDS EXCLUDED FROM THE AREA COMPRISED IN THE DISTRICT OF
MIRZAPUR

[See section 3, sub-section (1)]

Pargana or tappa	Village	Remarks
Kantit	Bajtha	These villages were transferred from the Allahabad District in 1840
	Baghaura Rajman	
	Pali	
	Sumatra	
	Barha Khurd	
	Basaura	
	Chak Kothara	
	Chak Madari	
	Dogauli	
	Rasaui	
Upraudh	Kothara	These villages were transferred from the Allahabad District in 1861.
	Ghunghuri	
	Hargarh	
	Nairi Katari	
	Durjanipur	
	Deohat	
	Mahuat	
	Maheshpur	
	Katra Lahoria Dih	
	Bhainsaur	
	Mahagarhi	

THE BIRTHS, DEATHS AND MARRIAGES REGISTRATION
ACT, 1886.

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ACT No VI OF 1886¹

[8th March, 1886]

An Act to provide for the voluntary Registration of certain Births and Deaths, for the establishment of General Registry Offices for keeping Registers of certain Births, Deaths and Marriages, and for certain other purposes.

WHEREAS it is expedient to provide for the voluntary registration of births and deaths among certain classes of persons, for the more effectual registration of those births and deaths and of the marriages registered under Act III of 1872, or the Indian Christian Marriage Act, 1872, and of certain marriages registered under the Parsi Marriage and Divorce Act, 1865,² and for the establishment of general registry offices for keeping registers of those births, deaths and marriages ;

AND WHEREAS it is also expedient to provide for the authentication and

¹ For Statement of Objects and Reasons, see Gazette of India, 1885, Pt. V, p. 12, for Report of the Select Committee, see *ibid.*, 1886, Pt. IV, p. 103, and for Proceedings in Council, see *ibid.*, 1885, Supplement, pp. 14 and 87, and *ibid.*, 1886, p. 290.

² See now the Parsi Marriage and Divorce Act, 1936 (3 of 1936).

(Chapter I.—Preliminary)

custody of certain existing registers made otherwise than in the performance of a duty specially enjoined by the law of the country in which the registers were kept, and to declare that copies of the entries in those registers shall be admissible in evidence,

It is hereby enacted as follows —

CHAPTER I

PRELIMINARY

Short title and commencement	<p>1. (1) This Act may be called the Births, Deaths and Marriages Registration Act, 1886, and</p> <p>(2) It shall come into force on such day¹ as the ²[Central Government], by notification in the ³[Official Gazette], directs</p>
Local extent	<p style="text-align: center;">* * * * *</p> <p>2 This Act ^{whole}extends to ^{whole}all the Provinces of India] and applies also ^{except part B states}to British subjects in Indian States.</p>
Definitions	<p>3. In this Act, unless there is something repugnant in the subject or context,—</p> <p>“sign” includes mark, when the person making the mark is unable to write his name.</p> <p>“prescribed” means prescribed by a rule made * * * * *</p> <p>under this Act and</p> <p>“Registrar of Births and Deaths” means a Registrar of Births and Deaths appointed under this Act</p>
Saving of local laws	<p>4. Nothing in this Act, or in any rule made under this Act, shall affect any law heretofore or hereafter passed providing for the registration of births and deaths within particular local areas</p>
Powers exercisable from time to time	<p>5. All powers conferred by this Act may be exercised from time to time as occasion requires</p>

¹ The 1st October, 1888 see Gazette of India, 1888, Pt I, p. 336

² Subs by the A O 1937, for “G G in C”

³ Subs by the A O 1937, for “Gazette of India”.

⁴ Sub-section (j) rep by the Amending Act, 1891 (12 of 1891)

⁵ It has been declared in force in the Sonthal Parganas by s 3 of the Sonthal Parganas Settlement Regulation (3 of 1872) It has also been partially extended to Berar by the Berar Laws Act, 1941 (4 of 1941)

⁶ Subs by the A O 1948, for “the whole of British India”

⁷ Subs by the A O 1937, for “within the dominions of Princes and States in India in alliance with Her Majesty, to British subjects in those dominions”.

⁸ The words “by the G G in C” rep by the A O 1937

(Chapter II—General Registry Offices of Births, Deaths and Marriages)

CHAPTER II.

GENERAL REGISTRY OFFICES OF BIRTHS, DEATHS AND MARRIAGES.

6. (1) Each ^{State} ~~Provincial~~ Government]—

Establishment
of general
registry
offices and
appointment
of Registrars
General

XV of 1872

(a) shall establish a general registry office for keeping such certified copies of registers of births and deaths registered under this Act, or marriages registered under Act III of 1872 (*to provide a form of marriage in certain cases*) or the Indian Christian Marriage Act, 1872, or, beyond the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Bombay, under the Parsi Marriage and Divorce Act, 1865², as may be sent to it under this Act, or under any of the three last-mentioned Acts, as amended by this Act, and

XV of 1865

(b) may appoint to the charge of that office an officer, to be called the Registrar General of Births, Deaths and Marriages, for the territories under its administration.

* * * *

XV of 1872
XV of 1865

7. Each Registrar General of Births, Deaths and Marriages shall cause indexes of all the certified copies of registers sent to his office under this Act, or under Act III of 1872, the Indian Christian Marriage Act, 1872, or the Parsi Marriage and Divorce Act, 1865² as amended by this Act, to be made and kept in his office in the prescribed form

Indexes to
be kept at
general regis-
try office

8. Subject to the payment of the prescribed fees, the indexes so made shall be at all reasonable times open to inspection by any person applying to inspect them, and copies of entries in the certified copies of the registers to which the indexes relate shall be given to all persons applying for them

Indexes to
be open to
inspection

9. A copy of an entry given under the last foregoing section shall be certified by the Registrar General of Births, Deaths and Marriages, or by an officer authorized in this behalf by the ^{State} ~~Provincial~~ Government], and shall be admissible in evidence for the purpose of proving the birth, death or marriage to which the entry relates.

Copies of
entries to be
admissible in
evidence.

10. Each Registrar General of Births, Deaths and Marriages shall exercise a general superintendence over the Registrars of Births and Deaths in the territories for which he is appointed

Superintend-
ence of Re-
gistrars by
Registrar
General

¹ Subs by the A O 1937, for "L G"

² See now the Parsi Marriage and Divorce Act, 1936 (3 of 1936)

³ Sub-section (2) rep by the A O 1937

(Chapter III —Registration of Births and Deaths)

CHAPTER III

REGISTRATION OF BIRTHS AND DEATHS

A —Application of this Chapter

Persons
whose births
and deaths
are regis-
trable

11. (1) The persons whose births and deaths shall, in the first instance, be registrable under this Chapter are the following, namely —

a part of state
of part of state

(4) in ¹the Provinces, the members of every race, sect or tribe to which the Indian Succession Act, 1865,² applies, and in respect of which an order under section 332 of that Act is not for the time being in force, and all persons professing the Christian religion,

X of 1865

(b) in ³Indian States, British subjects being members of a like race, sect or tribe or professing the Christian religion

(2) But the ⁴Provincial Government, by notification in the Official Gazette, may * * * extend the operation of this Chapter to any other class of persons either generally or in any local area

B —Registration Establishment

Power for
Provincial
Government
to appoint
Registrars for
its territories.

⁵12. The ⁶Provincial Government may appoint, either by name or by virtue of their office, so many persons as it thinks necessary to be Registrars of Births and Deaths for such local areas within the territories under its administration as it may define and, if it sees fit, for any class of persons within any part of those territories

Power for
Central
Government
to appoint

13. The ⁷Central Government may, by notification in the ⁸Official Gazette, appoint, either by name or by virtue of their office, so many persons as ⁹it thinks necessary to be ¹⁰Registrars of Births and Deaths for such

¹ Subs by the A O 1948, for "British India"

² See now the Indian Succession Act, 1925 (39 of 1925), s 3

³ Subs for "the dominions of Princes and States in India in alliance with Her Majesty" by the A O 1937

⁴ Subs by the A O 1937, for "L. G."

⁵ The words "with the previous approval of the G. G. in C" were omitted by s 2 and Sch I of the Devolution Act, 1920 (38 of 1920)

⁶ As to Registrars appointed under this section, see different local Rules and Orders, and Gen R & O, Vol II, p 559

⁷ Subs by the A. O 1937, for "G. G. in C"

⁸ Subs by the A. O 1937, for "Gazette of India"

⁹ Subs by the A O 1937, for "he"

¹⁰ For Registrars of Births and Deaths appointed under this section for—

(1) Indian States in the Bombay Presidency see Brit Enact, I S

(2) States of Pudukottai, Banganapalle, and Sandur, see Gazette of India, 1889, Pt I, p 52;

(3) State of Mysore, see Gazette of India, 1889, Pt I, p 54 and *ibid*, 1893, Pt I, p 381

(4) Hyderabad State, see Gazette of India, 1889 and 1890, Pt I, pp 621 and 468, respectively,

(5) Rampur and Tehri States, see Gazette of India, 1891, p 424,

(6) Kashmir and Jammu, see Brit Enact, I S,

(7) Central Provinces Feudatory States see Gazette of India, 1895, Pt. I, p 404,

(8) States in the Central India Agency, see Brit Enact, I S,

(9) The territory of the Raja of Nahan (Sirmur), see Gazette of India, 1899, Pt I, p 277,

(10) Certain States in Rajputana, see Gazette of India, 1912, Pt I, p 1951,

(Chapter III —Registration of Births and Deaths.)

local areas within ~~any~~ Indian State] as ²[it] may define and, if ³[it] sees fit, for any class of persons within any part of ³[those States]

Registrars
for Indian
States

* * * *

14. Every Registrar of Births and Deaths shall be deemed to be a public servant within the meaning of the Indian Penal Code

Registrar to
be deemed
a public
servant

15. [Power to remove Registrars] Rep by the A O 1937

16. (1) Every Registrar of Births and Deaths shall have an office in the local area, or within the part of the territories or dominions, for which he is appointed

Office and
attendance
of Registrar

(2) Every Registrar of Births and Deaths to whom the ⁵[~~Provincial~~ Government] may direct this sub-section to apply shall attend at his office for the purpose of registering births and deaths on such days and at such hours as the Registrar General of Births, Deaths and Marriages may direct, and shall cause to be placed in some conspicuous place on or near the outer door of his office his name, with the addition of Registrar of Births and Deaths for the local area or class for which he is appointed, and the days and hours of his attendance

17. (1) When any Registrar of Births and Deaths to whom the ⁵[~~Provincial~~ Government] may direct this section to apply, not being a Registrar of Births and Deaths for a local area in the town of Calcutta, Madras or Bombay, is absent, or when his office is temporarily vacant, any person whom the Registrar General of Births, Deaths and Marriages appoints in this behalf, or, in default of such appointment, the Judge of the District Court within the local limits of whose jurisdiction the Registrar's office is situate, or such other officer as the ⁵[~~Provincial~~ Government] appoints in this behalf, shall be the Registrar of Births and Deaths during such absence or until the ⁵[~~Provincial~~ Government] fills the vacancy

Absence of
Registrar or
vacancy in
his office

(2) When any such Registrar of Births and Deaths for a local area in the town of Calcutta, Madras or Bombay is absent, or when his office is temporarily vacant, any person whom the Registrar General of Births, Deaths and Marriages appoints in this behalf shall be the Registrar of Births and Deaths during such absence or until the ⁵[~~Provincial~~ Government] fills the vacancy

¹ Subs by the A O 1937, for "the dominions of any Prince or State in India in alliance with Her Majesty"

² Subs by the A O 1937, for "he"

³ Subs by the A O 1937, for "those dominions"

⁴ The proviso added by s 2 and Sch I of the Devolution Act, 1920 (38 of 1920), rep' by the A O 1937

⁵ Subs by the A O 1937, for "L G"

⁶ The section has been declared by the Govt of Madras to apply to all Registrars appointed by that Govt, under s, 12, see Mad R, and O

(Chapter III —Registration of Births and Deaths)

(3) The Registrar General of Births, Deaths and Marriages shall report to the ¹[~~Provincial~~ ^{State} Government] all appointments made by him under this section.

Register books to be supplied and preservation of records to be provided for.

18. The ¹[~~Provincial~~ ^{State} Government] shall supply every Registrar of Births and Deaths with a sufficient number of register books of births and of register books of deaths, and shall make suitable provision for the preservation of the records connected with the registration of births and deaths.

C—Mode of Registration

Duty of Registrar to register births and deaths of which notice is given

19. Every Registrar of Births and Deaths, on receipt of notice of a birth or death within the local area or among the class for which he is appointed, shall, if the notice is given within the prescribed time and in the prescribed mode by a person authorized by this Act to give the notice, forthwith make an entry of the birth or death in the proper register book.

Provided that—

- (a) if he has reason to believe the notice to be in any respect false, he may refuse to register the birth or death until he receives an order from the Judge of the District Court directing him to make the entry and prescribing the manner in which the entry is to be made, and
- (b) he shall not enter in the register the name of any person as father of an illegitimate child, unless at the request of the mother and of the person acknowledging himself to be the father of the child.

Persons authorized to give notice of birth

20. Any of the following persons may give notice of a birth, namely:—

- (a) the father or mother of the child,
- (b) any person present at the birth,
- (c) any person occupying, at the time of the birth, any part of the house wherein the child was born and having knowledge of the child having been born in the house,
- (d) any medical practitioner in attendance after the birth and having personal knowledge of the birth having occurred,
- (e) any person having charge of the child.

Persons authorized to give notice of death

21. Any of the following persons may give notice of a death, namely:—

- (a) any relative of the deceased having knowledge of any of the particulars required to be registered concerning the death,
- (b) any person present at the death,
- (c) any person occupying, at the time of the death, any part of the house wherein the death occurred and having knowledge of the deceased having died in the house,

¹ Subs by the A O 1937, for "L G"

(Chapter III —Registration of Births and Deaths.)

(d) any person in attendance during the last illness of the deceased ;

(e) any person who has seen the body of the deceased after death.

22. (1) When an entry of a birth or death has been made by the Registrar of Births and Deaths under section 19, the person giving notice of the birth or death must sign the entry in the register in the presence of the Registrar .

Entry of birth or death to be signed by person giving notice

¹[Provided that it shall not be necessary for the person giving notice to attend before the Registrar or to sign the entry in the register if he has given such notice in writing and has furnished to the satisfaction of the Registrar such evidence of his identity as may be required by any rules made by the ²[Provincial Government] in this behalf]

(2) Until the entry has been so signed ¹[or the conditions specified in the proviso to sub-section (1) have been complied with,] the birth or death shall not be deemed to be registered under this Act

(3) When the birth of an illegitimate child is registered, and the mother and the person acknowledging himself to be the father of the child jointly request that that person may be registered as the father, the mother and that person must both sign the entry in the register in the presence of the Registrar

23. The Registrar of Births and Deaths shall, on application made at the time of registering any birth or death by the person giving notice of the birth or death, and on payment by him of the prescribed fee, give to the applicant a certificate in the prescribed form, signed by the Registrar, of having registered the birth or death

Grant of certificate of registration of birth or death.

24. (1) Every Registrar of Births and Deaths in ~~the Provinces~~ ^{part A state or part C states} shall send to the Registrar General of Births, Deaths and Marriages for the territories within which the local area or class for which he is appointed is situate or resides, at the prescribed intervals, a true copy certified by him, in the prescribed form, of all the entries of births and deaths in the register book kept by him since the last of those intervals .

Duty of Registrars as to sending certified copies of entries in register books to Registrar General

Provided that in the case of Registrars of Births and Deaths who are clergymen of the Churches of England, Rome and Scotland, the Registrar may, if so directed by his ecclesiastical superior, send the certified copies in the first instance to that superior, who shall send them to the proper Registrar General of Births, Deaths and Marriages

In this sub-section " Church of England " and " Church of Scotland " mean the Church of England and the Church of Scotland as by law established respectively ; and " Church of Rome " means the Church which regards the Pope of Rome as its spiritual head

¹ Ins by the Births, Deaths and Marriages Registration (Amendment) Act, 1911 (9 of 1911), s 2

² Subs by the A. O 1937, for " L. G "

³ Subs by the A. O 1948, for " British India ".

(Chapter III —Registration of Births and Deaths.)

(2) The provisions of sub-section (1) shall apply to every Registrar of Births and Deaths in ^{Part 2} '[any ~~Indian~~ State]' with this modification that the certified copies referred to in that sub-section shall be sent to such one of the Registrars General of Births, Deaths and Marriages as the ^{State} '[Central Government]', by notification in the ^{State} '[Official Gazette]', appoints in this behalf

* * * * *

Searches and
copies of
entries in
register
books

25. (1) Every Registrar of Births and Deaths shall, on payment of the prescribed fees, at all reasonable times, allow searches to be made in the register books kept by him, and give a copy of any entry in the same

(2) Every copy of an entry in a register book given under this section shall be certified by the Registrar of Births and Deaths and shall be admissible in evidence for the purpose of proving the birth or death to which the entry relates

Exceptional
provision for
registration
of certain
births and
deaths

26. Notwithstanding anything in section 10, the ^{State} '[~~Provincial~~ Government]' may make rules⁶ authorizing Registrars of Births and Deaths, on conditions and in circumstances to be specified in the rules, to register births and deaths occurring outside the local areas or classes for which they are appointed

D —Penalty for False Information

Penalty for
wilfully
giving false
information

27. If any person wilfully makes, or causes to be made for the purpose of being inserted in any register of births or deaths, any false statement in connection with any notice of a birth or death under this Act, he shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both

E —Correction of Errors

Correction of
entry in
register of
births or
deaths

28. (1) If it is proved to the satisfaction of a Registrar of Births and Deaths that any entry of a birth or death in any register kept by him under

¹ Subs by the A O 1937, for "the dominions of any Prince or State in India in alliance with Her Majesty"

² Subs by the A O 1937, for "G G in C"

³ Subs by the A O 1937, for "Gazette of India"

⁴ The proviso, added by s 2 and Sch I of the Devolution Act, 1920 (38 of 1920), rep by the A O 1937

⁵ Subs by the A O 1937, for the words "L G", which had been subs for the words "G G in C" by s 3 of the Births, Deaths and Marriages Registration (Amendment) Act, 1911 (9 of 1911)

⁶ For rules made under s 26 conjointly with ss 28 and 36, see Gen R & O, Vol II, p 562, and different local Rules and Orders. All rules made by the G G in C under this Act before 1911 shall be deemed to have been made by the Provincial Government, see s 6 of Act 9 of 1911

(Chapter III—Registration of Births and Deaths Chapter IV—Amendment of Marriage Acts Chapter V—Special Provisions as to certain existing Registers)

this Act is erroneous in form or substance, he may, subject to such rules¹ as may be made by the ²[Provincial Government] with respect to the conditions and circumstances on and in which errors may be corrected, correct the error by entry in the margin, without any alteration of the original entry, and shall sign the marginal entry and add thereto the date of the correction

(2) If a certified copy of the entry has already been sent to the Registrar General of Births, Deaths and Marriages, the Registrar of Births and Deaths shall make and send a separate certified copy of the original erroneous entry and of the marginal correction therein made

CHAPTER IV

AMENDMENT OF MARRIAGE ACTS

[*Rep^d by the Repealing Act, 1938 (1 of 1938), s 2 and Sch]*

CHAPTER V

SPECIAL PROVISIONS AS TO CERTAIN EXISTING REGISTERS

32. If any person in ³~~[a province, or in ⁴[any Indian State]~~ *part A state of a part C*], has for the time being the custody of any register or record of birth, baptism, naming, dedication, death or burial of any persons of the classes referred to in section 11, sub-section (1), or of any register or record of marriage of any persons of the classes to which Act III of 1872 or the Indian Christian Marriage Act, 1872, or the Parsi Marriage and Divorce Act, 1865, applies, and if such register or record has been made otherwise than in performance of a duty specially enjoined by the law of the country in which the register or record was kept, he may, ⁵[at any time before the first day of April 1891], send the register or record to the office of the Registrar General of Births, Deaths and Marriages for the territories within which he resides, ~~or, if he resides within ⁶[any Indian State], to such one of the Registrars General as aforesaid as the ⁷[Central~~

Permission to persons having custody of certain records to send them within one year to Registrar General

XV of 1872
XV of 1865

¹ For rules made under s 26 conjointly with ss 28 and 36, see footnote 7 on prepage

² Subs by the A O 1937, for "L G" which had been subs for "G G in C" by s 3 of the Births, Deaths and Marriages Registration (Amendment) Act, 1911 (9 of 1911)

³ Subs by the A O 1948, for "British India"

⁴ Subs by the A O 1937, for "the dominions of any Prince or State in India in alliance with Her Majesty"

⁵ Subs for "within one year from the date on which this Act comes into force" by s 1 of the Births, Deaths and Marriages Registration Act (1886) Amendment Act, 1890 (16 of 1890)

⁶ Subs by the A O 1937, for "the dominions of any such Prince or State as aforesaid"

⁷ Subs by the A O 1937, for "G G in C"

(Chapter V—Special Provisions as to certain existing Registers)

Government], by notification in the ¹[Official Gazette], directs in this behalf.

²[Provided that such register or record shall, in the case of ³[any Indian State] ⁴[in which a Provincial Government exercises any extra-provincial jurisdiction,] be sent to the Registrar General of Births, Deaths and Marriages for the territories under the administration of that ⁵[Provincial Government]]

Appointment
of Commission-
ers to
examine
registers

33. ⁶[(1) Any ⁵[Provincial Government] in the case of registers or records sent under section 32 to the Registrar General for the territories under its administration, and the ⁷[Central Government], in the case of registers or records so sent to any other Registrar General appointed by ⁸[it] under the said section, may appoint so many persons as it * * * thinks fit to be Commissioners for examining such registers or records]

(2) The Commissioners so appointed shall hold office for such period as the ¹⁰[authority appointing them], by the order of appointment, or any subsequent order, directs

Duties of
Commission-
ers.

34. (1) The Commissioners appointed under the last foregoing section shall enquire into the state, custody and authenticity of every such register or record as may be sent to the Registrar General of Births, Deaths and Marriages under section 32,

and shall deliver to the Registrar General a descriptive list or descriptive lists of all such registers or records, or portions of registers or records, as they find to be accurate and faithful

(2) The list or lists shall contain the prescribed particulars and refer to the registers or records, or to the portions of the registers or records, in the prescribed manner

(3) The Commissioners shall also certify in writing, upon some part of every separate book or volume containing any such register or record, or portion of a register or record, as is referred to in any list or lists made by the Commissioners, that it is one of the registers or records, or portions of registers or records, referred to in the said list or lists

Archives of
its prepared
by Commis-
sioners and
sent of cer-
tified copies
of entries

35. (1) Subject to the payment of the prescribed fees, the descriptive list or lists of registers or records, or portions of registers or records, delivered by the Commissioners to the Registrar General of Births, Deaths and Marriages shall be, at all reasonable times, open to inspection by any person

¹ Subs by the A O 1937, for "Gazette of India"

² Ins. by s 2 and Sch I of the Devolution Act, 1920 (38 of 1920)

³ Subs by the A O 1937, for "any such dominions"

⁴ Subs by the A O 1948, for the original words

⁵ Subs by the A O 1937, for "L G"

⁶ Subs by Act 38 of 1920, s 2 and Sch I, for the original sub-section (1)

⁷ Subs by the A O 1937, for "G G in C"

⁸ Subs by the A O 1937, for "him"

⁹ The words "or he, as the case may be," rep by the A O 1937

¹⁰ Subs for "G G in C" by Act 38 of 1920, s 2 and Sch I

(Chapter V — *Special Provisions as to certain existing Registers*
Chapter VI — *Rules*)

applying to inspect it or them, and copies of entries in those registers or records shall be given to all persons applying for them

(2) A copy of an entry given under this section shall be certified by the Registrar General of Births, Deaths and Marriages, or by an officer or person authorized in this behalf by the ¹~~Provincial~~^{State} Government] and shall be admissible in evidence for the purpose of proving the birth, baptism, naming, dedication, death, burial or marriage to which the entry relates

²[35A. (1) The ³~~Central Government~~^{State} or the ¹~~Provincial Government~~^{State} may by notification in the Official Gazette] appoint more Commissions⁵ than one for the purposes of section 33, each such Commission consisting of so many and such members, and having its functions restricted to the disposal, under this Act and the rules thereunder, of such registers and records sent under section 32 to the Registrar General, as may be specified in the notification

Constitution of additional Commissions for purposes of this Chapter

(2) If more Commissions than one are appointed in exercise of the power conferred by sub-section (1), then references in this Act to the Commissioners shall be construed as references to the members constituting a Commission so appointed]

CHAPTER VI

RULES.

⁶[36. ⁷[(1) The Provincial Government, for each ~~Province~~^{State}, and the ~~Central Government, for British subjects in Indian States,~~ may make rules to carry out the purposes of this Act]

Rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may^a—

- (a) fix the fees payable under this Act ;
- (b) prescribe the forms required for the purposes of this Act ,
- (c) prescribe the time within which, and the mode in which, persons

¹ Subs by the A O 1937, for " L G "

² S 35-A was added by the Births, Deaths and Marriages Registration Act (1886) Amendment Act, 1890 (16 of 1890), s 2, which was repealed by the Devolution Act, 1920 (38 of 1920), s 3 and Sch II. The present sub-section (1) was subs for the original sub-section by the Devolution Act, 1920 (38 of 1920), s 2 and Sch I, and sub-section (2), which is the same as the original sub-section (2), was ins by the Repealing and Amending Act, 1934 (24 of 1934), s 2 and Sch I

³ Subs by the A O 1937 for " G G in C "

⁴ Subs by the A O 1937, for " if he or it thinks fit may by notification in the Gazette of India or the local official Gazette, as the case may be "

⁵ For Commissioners appointed under this section, see Gen R & O, Vol II, p 57¹

⁶ Subs by the Births, Deaths and Marriages Registration (Amendment) Act, 1911 (9 of 1911), s 4, for the original section

⁷ Subs by the A O 1937, for the original sub-section,

(Chapter VI.—Rules.)

Tramways

[1886: Act XI.]

authorized under this Act to give notice of a birth or death to a Registrar of Births and Deaths must give the notice ;

- (d) prescribe the evidence of identity to be furnished to a Registrar of Births and Deaths by persons giving notice of a birth or death in cases where personal attendance before such Registrar is dispensed with ,
- (e) prescribe the registers to be kept and the form and manner in which Registrars of Births and Deaths are to register births and deaths under this Act, and the intervals at which they are to send to the Registrar General of Births, Deaths and Marriages true copies of the entries of births and deaths in the registers kept by them ;
- (f) prescribe the conditions and circumstances on and in which Registrars of Births and Deaths may correct entries of births and deaths in registers kept by them ;
- (g) prescribe the particulars which the descriptive list or lists to be prepared by the Commissioners appointed under Chapter V are to contain, and the manner in which they are to refer to the registers or records, or portions of registers or records, to which they relate ; and
- (h) prescribe the custody in which those registers or records are to be kept

(3) Every power to make rules conferred by this Act is subject to the condition of the rules being made after previous publication

(4) All rules made under this Act shall be published in the ¹[Official Gazette], and on such publication shall have effect as if enacted in this Act]

37. [*Procedure for making and publication of rules*] *Rep by the Births, Deaths and Marriages Registration Amendment Act, 1911 (IX of 1911), s 5*

THE INDIAN TRAMWAYS ACT, 1886.

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¹ Subs by the A O 1937, for "local official Gazette",

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ACT NO XI OF 1886 ¹

[12th March, 1886]

An Act to facilitate the construction and to regulate the
working of Tramways

WHEREAS it is expedient to facilitate the construction and to regulate the working of tramways, It is hereby enacted as follows —

Preliminary

1. (1) This Act may be called the Indian Tramways Act, 1886, and

(2) It shall come into force at once

Short title
and com-
mencement

the whole of India except part 13 states and 1
 (1) It extends in the first instance to ~~all the Provinces of India~~ ^{the whole of India except part 13 states and 1} ^{Local extent}
 except the territories administered by the Governor of Fort Saint George in Council, the Governor of Bombay in Council and the Lieutenant-Governor of Bengal

³[(2) This Act may by notification in the Official Gazette be extended to the whole or any part of the said territories by the Provincial Government concerned]

3 In this Act, unless there is something repugnant in the subject or Definitions context,—

(1) "local authority" means a municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by ^{State} ~~the~~ [the Central Government or any Provincial Government] with, the control or management of a municipal or local fund

(2) "road" means the way of a road, street, thoroughfare, passage or place along or across which a tramway authorized under this Act is, or is intended to be, laid, and includes the surface-soil and sub-soil of a road, and the footway, berms, drains and ditches of a road, and any bridge, culvert or causeway forming part of a road

(3) "road-authority," in relation to a road, means—

(a) if a local authority maintains and repairs the road, then that authority,

¹ For Statement of Objects and Reasons see Gazette of India, 1885, Pt V, p 308, for Report of the Select Committee, see *ibid*, 1886, Pt IV, p 131, and for Proceedings in Council, see *ibid*, 1885, Supplement, p 1544, and *ibid*, 1886, Supplement, pp 7 and 418

² Subs by the A O 1948, for "the whole of British India"

³ Subs by the A O 1937, for the original sub-section (2)

This Act has been extended to the whole of the Bombay Presidency except the city of Bombay, see Bombay Gazette, 1887, Pt I, p 899, and to the city of Madras, see Fort St George Gazette, 1886, Pt I, p 750. It has also been partially extended to Berar by the Berar Laws Act, 1941 (4 of 1941)

For separate Acts on the subject of tramways in—

Bengal, see the Bengal Tramways Act, 1883 (Ben 3 of 1883)

Calcutta, see the Calcutta Tramways (Electric Traction) Act, 1900 (Ben 4 of 1900), and the Calcutta Tramways Act, 1880 (Ben 1 of 1880)

Bombay, see the Bombay Tramways Act, 1874 (Bom 1 of 1874)

⁴ Subs by the A. O 1937, for "the Govt"

(Preliminary)

- (b) if a local authority does not maintain and repair the road, and the road is neither vested in ~~Her Majesty~~ ^{Govt} nor maintained and repaired by ¹[the Central Government or any Provincial Government], then the person in whom the road is vested, and
- (c) if a local authority does not maintain and repair the road, and the road is vested in ~~Her Majesty~~ ^{Govt} or maintained and repaired by ~~¹[the Central Government or any Provincial Government]~~, ^{Govt} then ²[the Government for whose purposes a road is so vested or by which the road is maintained and repaired, as the case may be]
- (4) "circle," in relation to a local authority or road-authority, means the area within the control of that authority
- ¹(5) 'tramway' means a tramway having one, two or more rails, and includes—
- (a) any part of a tramway, or any siding, turnout, connection, line or track belonging to a tramway,
- (b) any electrical equipment of a tramway, and
- (c) any electric supply-line transmitting power from a generating station or sub-station to a tramway or from a generating station to a sub-station from which power is transmitted to a tramway]
- (6) "order" means an order authorizing the construction of a tramway under this Act, and includes a further order substituted for, or amending, extending or varying, that order
- (7) "promoter" means a local authority or person in whose favour an order has been made, and includes a local authority or person on whom the rights and liabilities conferred and imposed on the promoter by this Act and by the order and any rules made under this Act as to the construction, maintenance and use of the tramway, have devolved
- (8) "undertaking" includes all moveable and immoveable property of the promoter suitable to and used by him for the purposes of the tramway:
- (9) "carriage," in the case of a tramway on which steam-power or any other mechanical power ⁴[or electrical power] is used, includes an engine worked on the tramway for the purpose of producing ⁴[or utilizing] that power
- (10) "toll" includes any charge leviable in respect of the use of a tramway

¹ Subs by the A. O. 1937, for "the Govt"

² Subs by the A. O. 1937, for "the L. G."

³ Subs by s. 2 of the Indian Tramways (Amendment) Act, 1911 (5 of 1911), for the original clause

⁴ Ins by s. 3, *ibid*

(Preliminary Orders authorizing the Construction of Tramways)

(11) "lessee" means a person to whom a lease has been granted of the right of user of a tramway and of demanding and taking the authorized tolls :

(12) "District Magistrate" includes an officer empowered by the ¹[Government] by name or by virtue of his office to discharge within any local area all or any of the functions of a District Magistrate under this Act .

(13) "District Court" means a principal Civil Court of original jurisdiction, and includes a High Court having ordinary original civil jurisdiction

(14) "Collector" means the chief officer in charge of the revenue-administration of a district, and includes an officer empowered by the ¹[Government] by name or by virtue of his office to discharge within any local area the functions of a Collector under this Act * * *.

(15) "prescribed" means prescribed by rules made by the ¹[Government] under this Act ³[and

(16) "Government", in relation to any tramway which is, ~~for when~~ ^{wholly or} ~~completed will be,~~ ^{municipal} a federal railway, as defined in sub-section (2) of section ~~311~~ ³¹¹ of the Government of India Act, 1935, means the ^{State} ~~Central~~ Government, ^{or which is declared to be a} and, in relation to any other tramway, means the Provincial Government, ^{Central (20) of April 1948} ~~Central~~ ^{of the Constitution}

Orders authorizing the Construction of Tramways

4 (1) The ¹[Government] may make an order authorizing the construction of a tramway in a circle on application made —

(a) by the local authority of the circle with the consent of the road-authority of any road or part of a road which is to be traversed by the tramway and of which the local authority is not itself the road-authority, or

(b) by any person with the consent of the local authority of the circle, and of the road-authority of any road or part of a road which is to be traversed by the tramway and of which the local authority is not the road-authority.

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(2) A local authority shall not make an application for an order or be deemed to consent to an application being made by any person for an order, unless the making of the application or the giving of the consent has been approved by the local authority in manner prescribed

¹ Subs by the A O 1937, for "L G"

² The word "and" rep by the A O 1937

³ Ins by the A O 1937

⁴ Subs by the A O 1948, for the words "Federal Railway Authority"

⁵ The proviso to sub-section 4 (1) rep by the A O 1937

(Orders authorizing the Construction of Tramways)

Consent of
local or road-
authority not
necessary in
certain cases

5 When it is proposed to lay a tramway in two or more circles, and a local authority or road-authority having control in either or any of the circles does not consent thereto, or attaches conditions to its consent, the ¹[Government] may, nevertheless, make an order authorizing the construction of the tramway in the circle, or by the order impose on the promoter any conditions which it deems fit, if, after considering the reasons of the authority for withholding its consent or attaching the conditions thereto, it is satisfied that the construction of the tramway in the circle is expedient, or, as the case may be, that the conditions attached by the authority to its consent ought not to be imposed

Procedure
for making
order

6 (1) The ¹[Government] on receiving an application shall consider it, and, if satisfied as to the propriety of proceeding thereon, publish in the Official Gazette, and in such other manner as it deems sufficient for giving information to persons interested, a draft of a proposed order authorizing the construction of the tramway

(2) A notice shall be published with the draft stating that any objection or suggestion which any person may desire to make with respect to the proposed order will, if submitted to the ¹[Government] on or before a date to be specified in the notice, be received and considered

(3) If, after considering any objections or suggestions which may have been made with respect to the draft on or before the date so specified, the ¹[Government] is of opinion that the application should be granted, with or without addition or modification, or subject or not to any restriction or condition, it may make an order accordingly

(4) Every order authorizing the construction of a tramway shall be published in the Official Gazette in English, and in the other prescribed language or languages, if any, and that publication shall be conclusive proof that the order has been made as required by this section

Contents of
order

7. (1) An order made under section 6 shall empower the promoter therein specified to construct and maintain the tramway therein described in the manner therein provided, and shall specify the time within which the tramway shall be commenced and the time within which it shall be completed and opened for public traffic

(2) The order may also provide, in manner consistent with this Act, for all or any of the following, among other matters, that is to say —

- (a) a period before the expiration of which the tramway shall not be commenced, and the conditions subject to which the local authority, when it is not itself the promoter, may, within that period elect to be substituted in the place of the promoter in respect of the undertaking or of so much thereof as is within

¹ Subs by the A O 1937, for " L G "

(Orders authorizing the Construction of Tramways)

its circle ; and the limits of time within which, and the terms upon which, the local authority may, after the tramway has been constructed, require the promoter to sell to it the undertaking or so much thereof as is within its circle ;

- (b) the acquisition by the promoter of land for the purposes of the tramway, and the disposal by him of land which has been acquired but is no longer required for those purposes ;
- (c) the conditions subject to which roads may be opened and broken up for the purposes of the construction or maintenance of the tramway or any part thereof, and the method of, and materials to be used in, the reinstating of the roads, and the approval of the method and materials by the ¹[Government] or the road-authority before the commencement of the work ,
- (d) the conditions on which the tramway may be constructed over a bridge or across a railway or tramway when the carriage-way over the bridge is to form part of the tramway or when the tramway is to cross a railway or another tramway on the level ,
- ²[(e) the space which shall ordinarily intervene between the outside of the carriage-way on either side of a road whereon the tramway is to be constructed, and—
 - (i) In the case of a tramway having one rail, the rail of the tramway, or
 - (ii) in the case of a tramway having two or more rails, the nearest rail of the tramway,
 and the conditions on which a smaller space may be permitted]
- (f) the gauge of the tramway, the rails to be used, and the mode in which, and the level at which, they shall be laid and maintained , and the adoption and application by the promoter of such improvements in the rails, and in their situation, and in the sub-structure upon which they rest, as the ¹[Government] may from time to time require ,
- (g) the portion of the road or roads traversed by the tramway to be kept in repair by the promoter ; the maintenance by the promoter to the satisfaction of the ¹[Government] or the road-authority, or both, of that portion of the road or roads ; and the liability of the promoter, on the requisition of the ¹[Government], from time to time to adopt and apply such improvements

¹ Subs by the A. O. 1937, for " L. G. "

² Subs by s 4 of the Indian Tramways (Amendment) Act, 1911 (5 of 1911) for the original clause

(Orders authorizing the Construction of Tramways)

in the tramway as the ¹[Government] may consider necessary or desirable for the safety or convenience of the public, and to alter the position or level of the tramway to suit future alterations in the road or roads ,

- (h) the application of material excavated by the promoter in the construction or maintenance of the tramway ;
- (i) the provision of such crossings, passing-places, sidings, junctions and other works, in addition to those specified in or authorized by the order, as may from time to time be necessary or convenient to the efficient working of the tramway ;
- (j) the powers which may from time to time be exercised by the ¹[Government], the local authority, the road-authority or any person in respect of sewers, drains, telegraph-lines, gas-pipes, water-pipes or other things in or on land occupied by the tramway , the notice (if any) to be given of the intended exercise of those powers ; the manner in which the powers shall be exercised , and the extent to which the tramway and the traffic thereon may be interfered with in the exercise thereof ;
- (k) the conditions subject to which the promoter may from time to time interfere with, or alter or require the alteration of the position of, drains (not being sewers or main drains), telegraph-lines, gas-pipes, water-pipes or other things as aforesaid ;
- (l) the provision of a temporary tramway in place of a part of a tramway which has been removed, or of which the use has been discontinued by reason of the execution of any work affecting a road along which the part of the tramway was laid, or by reason of the use of the road being interrupted by floods or other cause ;
- (m) the motive power to be used on the tramway, and the conditions on which steam-power or any other mechanical power ²[or electrical power] may be used ;
- (n) the nature, dimensions, fittings, appliances and apparatus of the carriages to be used on the tramway, and the inspection and examination thereof by officers of the ¹[Government] or the local authority, and the liability of the promoter or lessee, on the requisition of the ¹[Government], from time to time, to adopt and apply such improvements in the carriages, and in the fittings, appliances and apparatus, as the ¹[Government] may consider necessary or desirable for the safety or convenience of the public;

¹ Subs by the A O 1937, for " L. G "

² Ins by s 5 of the Indian Tramways (Amendment) Act, 1911 (5 of 1911)

(Orders authorizing the Construction of Tramways)

- (o) the traffic which may be carried on the tramway, the traffic which the promoter or lessee shall be bound to carry, and the traffic which he may refuse to carry, the tolls to be leviable by the promoter or lessee, and the periodical revision thereof by the ¹[Government], and the regulation of the traffic and of the levy of the tolls ;
- (p) the use of the tramway free of toll by the local authority, with its own carriages, for specified purposes, during specified hours, with power to the local authority to make such sidings and other works as may be necessary for communication between its premises and the tramway ,
- (q) the conditions subject to which the promoter may transfer the undertaking, or any part thereof, by sale, mortgage, lease, exchange or otherwise ; and the conditions subject to which the local authority may be the transferee ;
- (r) the performance by the ¹[Government] or by the local authority or road-authority of any work required by the Act or the order to be done by the promoter , and
- (s) the penalty to be incurred by the promoter or lessee for failure to observe any condition or direction contained in the order, and the application of the penalty when recovered

(3) The ¹[Government] may, in providing in the order for the acquisition of land for the purposes of a tramway of which the promoter is not a company, direct that land may be acquired for the promoter under the provisions of the Land Acquisition Act, 1870,² in the same manner and on the same conditions as it might be acquired for the purposes of the tramway if a company were the promoter.

(4) The order shall imply the condition—

- (a) in the case of a tramway of which a local authority is the promoter, that a lease thereof shall be granted only in manner by this Act provided ; and
- (b) in the case of a tramway of which a local authority is not the promoter, that a lease thereof shall be only of the right of user and of demanding and taking the authorized tolls, and shall not confer or impose on the lessee any of the powers or duties of the promoter in respect of the construction or maintenance of the tramway.

8. (1) The ¹[Government] may, on the application of the promoter, Further
order revoke, amend, extend or vary the order by a further order.

¹ Subs by the A O 1937, for " L G "

² See now the Land Acquisition Act, 1894 (1 of 1894)

(Orders authorizing the Construction of Tramways)

(2) An application for a further order shall be made in the same manner and subject to the same conditions as an application for an order

(3) The ¹[Government] may, in its discretion, either grant or reject the application

(4) If it grants the application, it shall make the further order in the same manner as an order, except that no addition to, or modification of, the rights, powers and authorities asked for in the application, or restriction or condition with respect thereto, shall be made or imposed by the further order without the consent in writing of the promoter

Power to
authorize
joint work
by local
authorities

9 (1) Subject to, and in accordance with, the provisions of this Act, the ¹[Government] may, on a joint application, or on two or more separate applications, make an order empowering two or more local authorities, respectively, jointly to construct the whole, or separately to construct parts, of a tramway, and jointly or separately to own the whole or parts thereof

(2) All the provisions of this Act which relate to the construction of tramways shall extend and apply to the construction of the whole and the separate parts of the tramway, and the form of the order may be adapted to the circumstances of the case

Cessation of
powers given
by an order

10 (1) If a promoter authorized by an order to construct a tramway—
 (a) does not within the time specified in the order substantially commence the construction of the tramway, or
 (b) having commenced the construction suspends it without a reason sufficient in the opinion of the ¹[Government] to warrant the suspension, or
 (c) does not within the time specified in the order complete the tramway and open it for public traffic,
 the following consequences shall ensue —

- (i) the powers given by the order to the promoter for constructing the tramway and otherwise in relation thereto shall, unless the ¹[Government], by special direction in writing, prolongs the time or condones the suspension, cease to be exercised except as to so much of the tramway as is then completed,
- (ii) as to so much of the tramway as is then completed, the ¹[Government] may either permit, or refuse to permit, the powers given by the order to continue,
- (iii) if the ¹[Government] refuses to permit the powers to continue, then so much of the tramway as is then completed may be dealt with, under the provisions of this Act relating to the disconti-

(Orders authorizing the Construction of Tramways Construction and Maintenance of Tramways Traffic on Tramways)

nuance of tramways, as a tramway of the working whereof the discontinuance has been proved to the satisfaction of the¹[Government]

(2) A notification published by the¹[Government] in the Official Gazette to the effect that on a date specified in the notification the construction of a tramway had not been substantially commenced or a tramway had not been completed and opened for public traffic, or that the construction of a tramway had been suspended without sufficient reason, shall, for the purposes of this section, be conclusive proof of the matter stated therein

Construction and Maintenance of Tramways

11. A tramway shall be constructed and maintained in the manner provided by the order. Mode of formation of tramway

12. A tramway, or portion or extension of, or addition to, a tramway, shall not be opened for public traffic²[until it has been inspected and certified to be fit for such traffic by an engineer appointed *by Govt.* Inspection of tramway before opening

~~¹[(a) if the tramway¹ is a railway, by the Central Government,]~~

~~(b) if the tramway is not a railway, by the Provincial Government]~~

13 Subject to the provisions of any order for the time being in force with respect to the matters mentioned in section 7, sub-section (2), clause (g), the road-authority and the promoter may from time to time enter into agreements as to the keeping in repair of the whole or a part of a road traversed by a tramway, and as to the proportion to be paid by either of them of the expense of keeping the road or part in repair Agreement between road-authority and promoter as to repair of roadway

Traffic on Tramways

14. (1) The promoter of a tramway shall, subject to the provisions of sub-section (2) and to the other provisions of this Act and of the order, have the exclusive use of the tramway for carriages with flange-wheels or other wheels suitable to run on the rail described in the order as the rail to be used on the tramway : Rights of promoter and the public over tramways

¹ Subs by the A O 1937, for "L. G."

² Subs by the A O 1937, for "until an engineer appointed in this behalf by the L. G. has inspected it and certified it to be fit for such traffic"

³ Subs by the A O 1948, for the original cl

⁴ I.e., if the tramway is not wholly within a municipal area see definition of "railway" in the G. of I. Act, 1935 (26 Geo 5, ch 2), s 311 (2).

(Traffic on Tramways)

Provided that nothing in this Act or in the order or any rule made under this Act shall affect the right of any person authorized to use a tramway or railway to pass across a tramway constructed under this Act with carriages having wheels suitable to run on the rail thereof

(2) The public shall have a right to pass along or across any part of a road along or across which a tramway is constructed, whether on or off the tramway, with carriages not having flange-wheels or other wheels suitable to run on the rail of the tramway

Provided—

- (a) that this sub-section shall not apply where the tramway is constructed on land the right to the exclusive possession of which has been acquired by the promoter, and
- (b) that the ¹[Government] may by an order authorize the construction of a tramway on any part of a road with rails raised above the surface of the road, if it is satisfied that the convenience of the public will not be injuriously affected thereby

Tolls leviable
by promoter
or lessee.

15 (1) The promoter or lessee may demand and take, in respect of the tramway, tolls not exceeding the limits specified in or determinable under the order, or, if the order contains no provision in this behalf, then such sums as may from time to time be fixed by the promoter or lessee with the previous sanction of the ¹[Government]

(2) A list of all the tolls authorized to be levied shall be exhibited, in such languages as the District Magistrate may direct, in a conspicuous place inside and outside each of the carriages used upon the tramway

Carriage of
dangerous
or offensive
goods

16. (1) A person shall not be entitled to carry or to require to be carried, on a tramway constructed under this Act, any goods of a dangerous or offensive nature

(2) A person taking such goods with him on the tramway shall, before entering the carriage, give notice of their nature to the servant of the promoter or lessee in charge of the carriage.

(3) A person sending such goods by the tramway shall distinctly mark their nature on the outside of the package containing them, or otherwise give notice thereof in writing to the servant of the promoter or lessee with whom he leaves them for the purpose of their being sent by the tramway

(4) Any servant of the promoter or lessee may refuse to carry upon the tramway a parcel which he suspects to contain goods of a dangerous or offensive nature, and, if any such parcel has been received for the purpose of being carried upon the tramway, may stop the transit thereof until he is satisfied as to the nature of its contents.

(5) Where a servant of the promoter or lessee refuses under sub-section (4) to carry a parcel which has been received for the purpose of being carried

¹ Subs by the A O 1937, for "L G"

(Traffic on Tramways Licenses to use Tramways)

upon the tramway, he shall, as soon as may be, give notice of his refusal to the consignor or consignee if he refuses at a time when neither of them is present

Licenses to use Tramways.

17. If, at any time after a tramway or part of a tramway has been for three years opened for public traffic in a circle, the local authority of the circle represents in writing to the ¹[Government] that the public is deprived of the full benefit of the trainway or of the part thereof, the ¹[Government] may, if after considering any statement which the promoter or lessee or both may desire to make, and after such further enquiry as it deems necessary, it is satisfied as to the truth of the representation, grant a license to any person to use the tramway conformably to this Act and to the order and the rules made under this Act, subject to the following provisions, namely —

Grant to third part of licenses use tramw in certain events

- (a) the license shall be for a period not less than one year or more than three years from the date of the license, but the ¹[Government] may in its discretion renew it,
- (b) the license shall be to use the whole of the tramway for the time being opened for public traffic, or such part or parts of the tramway as the ¹[Government], having regard to the cause for granting the license, thinks fit,
- (c) the license shall specify the number of carriages which the licensee shall run upon the tramway, the mode in which, and times at which, the carriages shall be run, the tolls to be paid to the promoter or lessee by the licensee for the use of the tramway, and the tolls, being those for the time being leviable by the promoter or lessee, which the licensee may demand and take for the use of his carriages,
- (d) the licensee and his officers and servants shall permit one person, duly authorized for that purpose by the promoter or lessee, to travel free of toll in or upon each carriage of the licensee run upon the tramway for the whole or any part of a journey;
- (e) any provision of this Act, or of the order or rules made under this Act, relating to the functions of a servant of a promoter or lessee shall be construed, so far as may be, as referring to a servant of the licensee, and
- (f) the ¹[Government] may revoke, alter or modify the license for any cause sufficient in its opinion to warrant the revocation, alteration or modification thereof

¹ Subs by the A O, 1937, for "L G."

(Licenses to use Tramways Discontinuance of Tramways)

Licensee to
give to pro-
moter or
lessee an
account of
traffic

18. A licensee shall, on demand, give to an officer or servant authorized in that behalf by the promoter or lessee an exact account in writing, signed by the licensee, of the number of passengers, or number or quantity of goods, conveyed by any and every carriage used by him on the tramway

Discontinuance of Tramways

Cessation of
powers of
promoter and
lessee on dis-
continuance
of tramway.

19. If it is proved to the satisfaction of the ¹[Government], at any time after the opening of a tramway for public traffic, that the working of the tramway, or any part thereof, has been practically discontinued, for the space of three months, without a reason sufficient, in the opinion of the ¹[Government], to warrant the discontinuance, the ¹[Government], if it thinks fit, may, by notification in the Official Gazette, declare that the powers of the promoter and of the lessee, if any, in respect of the tramway or the part thereof of which the working has been so discontinued, shall, from the date of the notification, be at an end, and thereupon the said powers shall cease and determine, except in so far as they may be purchased by a local authority in manner by this Act provided.

Powers of
road-authority
on cessation
of powers of
promoter.

20. (1) Where a notification has been published under section 19, the road-authority may, at any time after the expiration of two months from the date of the notification, remove the tramway or part of the tramway of which the working has been so discontinued, and use the materials thereof in reinstating the road

(2) The promoter shall pay to the road-authority the cost incurred by that authority in removing the tramway or the part thereof and in reinstating the road

(3) The cost shall be certified by an officer of the road-authority, and his certificate, countersigned by the District Magistrate, shall be conclusive proof as to the cost incurred

(4) If the promoter does not pay the amount so certified within one month after the delivery to him of the certificate or of a copy thereof, the road-authority may, without any previous notice to the promoter and without prejudice to any other remedy which it may have for the recovery of the amount, sell and dispose of such materials of the tramway or part thereof removed as it has not used in reinstating the road, either by public auction or by private sale, and for such sum or sums, and to such person or persons, as it thinks fit, and may, out of the proceeds of the sale, pay and reimburse itself the amount of the cost aforesaid and of the expenses of the sale, and shall pay over the residue (if any) of the proceeds of the sale to the promoter

¹ Subs by the A O 1937, for "L G"

*(Insolvency of Promoter Purchase of Tramways)**Insolvency of Promoter.*

21. (1) If, at any time after the opening of a tramway in a circle for public traffic, it appears to the road-authority or local authority of the circle that the promoter of the tramway is insolvent, so that he is unable to maintain the tramway, or to work it with advantage to the public, and either of those authorities makes a representation to that effect to the ¹[Government], the ¹[Government] may, if after considering any statement which the promoter may desire to make, and after such further enquiry as it deems necessary, it is satisfied as to the truth of the representation, declare, by notification in the Official Gazette, that the powers of the promoter shall, at the expiration of six months from the publication of the notification, be at an end, and the powers of the promoter shall cease and determine at the expiration of that period, except in so far as they may be purchased by a local authority in manner by this Act provided

Proceedings
in case of
insolvency of
promoter.

(2) Where a notification has been published under sub-section (1), the road-authority may, at any time after the expiration of six months from the date thereof, remove the tramway in the same manner, and subject to the same provisions as to the payment of the cost of the removal and to the same remedy for recovery of the cost, in every respect as in cases of removal under section 20

Purchase of Tramways

22. (1) Where the promoter of a tramway in a circle is not the local authority, the local authority, with the previous sanction of the ¹[Government], may—

Future purchase of
undertaking
by local
authority

- (a) within such limits of time as may be specified in this behalf in the order, or
- (b) if a time was not specified in the order, then within six months after the expiration of a period of twenty-one years from the date of the order, and within six months after the expiration of every subsequent period of seven years, or
- (c) within two months after the publication of a notification under section 19 or within six months after the publication of a notification under section 21,

by notice in writing, require the promoter to sell to the local authority his undertaking or the part thereof which is within the circle of the local authority, and thereupon the promoter shall sell the same upon the terms specified in the order, or, if the terms were not specified in the order, then upon the terms of paying the then value of the undertaking or of the part thereof, exclusive of any allowance for past or future

¹ Subs by the A.O. 1937, for "L. G."

*(Purchase of Tramways Working of Tramways owned
by Local Authorities)*

profits of the undertaking or any compensation for compulsory sale or other consideration whatsoever

(2) A requisition shall not be made under sub-section (1) unless the making thereof has been approved by the local authority in manner prescribed

(3) When a sale has been made under this section, all the rights, powers and authorities of the promoter in respect of the undertaking or part thereof sold, or, where a notification has been published under section 19 or section 21, all the rights, powers and authorities of the promoter previous to the publication of the notification in respect of the undertaking or part thereof sold, shall be transferred to the authority to whom the undertaking or part has been sold, and shall vest in, and may be exercised by, that authority in the same manner as if the tramway had been constructed by it under an order made under this Act

(4) Subject to, and in accordance with, the preceding provisions of this section, two or more local authorities may jointly purchase an undertaking or so much thereof as is within their circles

Working of Tramways owned by Local Authorities

Lease of, or
working of,
tramway by
local authority.

23 (1) When a local authority has under the authority of an order completed a tramway, or has under the provisions of this Act or of an order acquired possession of a tramway, it may, by a lease to be approved by the ¹[Government], let to any person the right of user of the tramway and of demanding and taking the authorized tolls

(2) On the determination of a lease the local authority may from time to time let the right for such further term and on such conditions as the ¹[Government] may approve

(3) Every lease made under this section shall imply a condition of re-entry if at any time after the making thereof it is proved to the satisfaction of the ¹[Government] that the lessee has practically discontinued the working of the tramway leased, or of any part thereof, for the space of one month without a reason sufficient, in the opinion of the ¹[Government], to warrant the discontinuance

(4) Notice of the intention of the local authority to make a lease shall be given in manner prescribed

(5) If the local authority cannot by means of a lease obtain what it deems to be a fair rent for the tramway, it may itself, with the previous sanction of the ¹[Government] and for such term as the ¹[Government] directs, place and run carriages upon the tramway, and demand and take the authorized tolls in respect of the use of the carriages

¹ Subs by the A O 1937, for "L G"

(Rules)

Rules

24 (1) In addition to any other power to make rules expressly or by implication conferred by this Act, the ¹[Government] may make rules consistent with this Act— Power to make rules

- (a) as to the form in which an application for an order shall be made ,
- (b) as to the costs to be paid by an applicant in respect of an order, and the time when, and the place where, those costs shall be paid ,
- (c) as to the payment of money or lodgment of securities, by way of deposit, by the applicant for an order before the order is published under section 6, sub-section (4), or a further order is made under section 8, the investment of money so paid , the disposal of interest or dividends from time to time accruing due on money or securities so paid, lodged or invested , the application of the money or securities or the produce thereof to the discharge of any liability incurred by the promoter , and the forfeiture, repayment or return of the money or securities ,
- (d) as to the plans and sections of any works to be deposited by applicants for orders or by promoters ,
- (e) for regulating the use of steam-power or any other mechanical power ²[or electrical power] on a tramway ,
- (f) as to any matter specified in section 7, sub-section (2), clauses (c), (d), (e), (g) and (h), as a matter which may be provided for in an order, when that matter has not been so provided for, or has not, in the opinion of the ¹[Government], been effectually so provided for ,
- (g) as to the periodical submission, by promoters, lessees and licensees, of accounts of traffic and receipts to the ¹[Government] or as that Government directs, and as to the forms in which those accounts are to be submitted ,
- (h) as to the accidents of which report is to be made to the ¹[Government] or as that Government directs ,
- (i) as to any matter respecting which rules may be made under this section by a local authority or a promoter or lessee , and
- (j) generally, as to any other matter or thing in respect of which it may seem to the ¹[Government] to be expedient to make rules for carrying out the purposes of this Act

(2) A local authority may, from time to time, with the previous sanction of the ¹[Government], make rules consistent with this Act and with the

¹ Subs by the A O 1937, for " L G "

² Ins by s 6 of the Indian Tramways (Amendment) Act, 1911 (5 of 1911)

(Rules)

order and any rules made by the ¹[Government] under this Act, for regulating—

- (a) the rate of speed to be observed in travelling upon a tramway within the circle of the local authority ,
- (b) the use of animal power on the tramway ,
- (c) the distances at which carriages using the tramway are to be allowed to follow one after the other ,
- (d) the stopping of carriages using the tramway, and the notice to be given to the public of their approach ,
- (e) the manner in which carriages using the tramway after sunset and before sunrise are to be lighted ,
- (f) the traffic on roads along or across which the tramway is laid ,
- (g) the number of passengers which may be carried in any carriage,
- (h) the licensing and control of drivers, conductors and other persons having charge of the carriages of the promoter or lessee or a licensee , and,
- (i) generally, the mode of use of the tramway

²[Provided that, if the tramway is a railway, the sanction required by this sub-section shall, in such cases as the Central Government may determine, be the sanction of that Government]

(3) The promoter or lessee of a tramway may, from time to time, with the previous sanction of the ¹[Government], make rules³ consistent with this Act and with the order and any rules made under this Act—

- (a) for preventing the commission of any nuisance in or upon any carriage, or in or against any premises, belonging to him , and
- (b) for regulating the travelling in any carriage belonging to him

(4) The ¹[Government] may cancel any rule made by a local authority or by a promoter or lessee under this section . . .

Power to
impose
penalty
by rule

25 The authority making any rule under section 24 may direct that a breach of it shall be punishable with fine which may extend,—

- (a) if the authority making the rule is the ¹[Government], to two hundred rupees, and,
- (b) if that authority is a local authority or a promoter or lessee, to twenty rupees ,

and, when the breach is a continuing breach, with a further fine which may extend,—

- (c) if the authority making the rule is the ¹[Government], to fifty rupees, and,

¹ Subs. by the A O 1937, for "L G "

² Ins. by the A O 1937, Cf the G of I Act, 1935 (26 Geo 5, c 2), s 181 (3) and definition of " railway " in s 311 (2)

³ For an instance, see Mad R and O

(Rules Offences)

(d) if that authority is a local authority or a promoter or lessee, to five rupees,
for every day after the first during which the breach continues

26. (1) Every authority having power to make rules under any section of this Act shall, before making the rules, publish a draft of the proposed rules for the information of persons likely to be affected thereby

Procedure for making, and publication of, rules

(2) The publication shall be made, in the case of rules made by the ¹[Government], in such manner as may in its opinion be sufficient for giving information to persons interested, and, in the case of rules made by a local authority or by a promoter or lessee, in manner prescribed.

(3) There shall be published with the draft a notice specifying a date, not earlier than the expiration of one month after the date of publication, at or after which the draft will be taken into consideration.

(4) The authority shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified

(5) The publication in the Official Gazette of a rule purporting to be made under this Act shall be conclusive proof that it has been duly made

Offences

27. If a promoter—

(a) constructs or maintains a tramway otherwise than in accordance with the order, or

(b) opens the tramway for traffic, or permits it to be so opened, before it has been inspected and certified in manner required by section 12, or

(c) fails to observe any requirement or condition of the order for neglect or breach whereof no penalty has been expressly provided in the order,

Penalty for failure of promoter, lessee or licensee to comply with act or order

or if a promoter, lessee or licensee runs a carriage on a tramway otherwise than in accordance with the order,

he shall (without prejudice to the enforcement or specific performance of the requirements of this Act or of the order, or to any other remedy which may be obtained against him in a Court of Civil Judicature), on complaint made by the ¹[Government] or by the local authority or road-authority or by the District Magistrate or, with the previous sanction of the District Magistrate, by any person injuriously affected by the act or omission, be punished with fine which may extend to two hundred rupees, and in the case of a continuing offence to a further fine which may extend to fifty rupees for every day after the first during which the offence continues to be committed.

¹ Subs. by the A. O. 1937, for "L. G."

(Offences)

Penalty for obstructing promoter in exercise of his powers

28. If any person without lawful excuse, the burden of proving which shall lie upon him, wilfully obstructs any person acting under the authority of the promoter in the lawful exercise of his powers in constructing or maintaining a tramway, or injures or destroys any mark made for the purpose of setting out the line of the tramway, he shall be punished with fine which may extend to fifty rupees

Penalty for interfering with tramway

29. If any person without lawful excuse, the burden of proving which shall lie upon him, wilfully does any of the following things, namely —

- (a) interferes with, removes or alters any part of a tramway constructed under this Act, or of the works connected therewith, or
- (b) places or throws upon or across any such tramway any wood, stone, refuse or other thing, or
- (c) does anything in such a manner as to obstruct any carriage using any such tramway, or
- (d) abets within the meaning of the Indian Penal Code the doing of, XLV of 1860 or attempts to do, anything mentioned in clause (a), clause (b), or clause (c),

he shall (without prejudice to any other remedy which may be obtained against him in a Court of Civil Judicature) be punished with fine which may extend to one hundred rupees

Penalty for using tramway with carriage having flange-wheels

30. If any person, except under a lease from, or by agreement with, the promoter, or under license from the ¹[Government] granted under this Act, uses on a tramway, otherwise than as permitted by section 14, a carriage having flange-wheels or other wheels suitable to run on the rail of the tramway, he shall be punished with fine which may extend to two hundred rupees

Penalty for evading payment of proper toll

31. (1) If any person travelling or having travelled in a carriage of the promoter or lessee or of a licensee evades or attempts to evade payment of toll, or if any person having paid toll for a certain distance wilfully proceeds in any such carriage beyond that distance and does not pay the additional toll for the additional distance or attempts to evade payment thereof, or if any person wilfully refuses or neglects on arriving at the point to which he has paid toll to quit the carriage, he shall be punished with fine which may extend to ten rupees

(2) When a person commits an offence under this section and refuses on demand of a servant of the promoter, lessee or licensee to give his name and residence, or gives a name or residence which the servant has reason to believe to be false, he may be arrested and taken to the nearest police-station by the servant or any person whom the servant may call to his aid

¹ Subs by the A. O 1937, for "L. G."

(Offences. Settlement of Differences.)

(3) When the person is taken to the police-station he shall with the least possible delay be forwarded to the nearest Magistrate, unless his true name and residence are ascertained, in which case he shall be released on his executing a bond for his appearance before a Magistrate if so required

Penalty for taking or sending dangerous or offensive goods without giving notice

32. If any person takes or sends by a tramway any goods of a dangerous or offensive nature without giving the notice required by section 16, he shall be punished with fine which may extend to fifty rupees

Penalty for licensee not giving to promoter or lessee an account of traffic or giving false account

33. (1) If a licensee fails on demand to give the account mentioned in section 18, or, with intent to evade the payment of tolls, gives a false account when he is called upon to give an account under that section, he shall be punished with fine which may extend to fifty rupees.

(2) The fine shall be in addition to any tolls payable by the licensee to the promoter or lessee in respect of the passengers or goods conveyed by the carriage or carriages used by the licensee on the tramway

34. Nothing in this Act shall prevent a person from being prosecuted under any other law for an act or omission which constitutes an offence against this Act or the rules made under it, or from being liable under that other law to any other or higher punishment or penalty than that provided by this Act or the rules made under it:

Saving of prosecutions under other laws.

Provided that a person shall not be punished twice for the same offence.

Settlement of Differences

35. (1) If any difference arises between the promoter or lessee on the one hand and the ¹[Government], or the local authority, or the road-authority, or a person having the charge of any sewers, drains, telegraph-lines, gas-pipes, water-pipes or other things in or on land occupied by the tramway, on the other hand, with respect to any interference or control exercised or claimed to be exercised by, or on behalf of, either party by virtue of this or any other Act, or of the order or the rules made under this Act, or with respect to the propriety of, or the mode of, the execution of any work, or with respect to any compensation to be made by or to the promoter or lessee, or on the question whether any work is such as ought reasonably to satisfy the ¹[Government] or the road-authority or both, or with respect to any other subject or thing regulated by, or comprised in, this Act or the order or the rules made under this Act, and not otherwise expressly provided for therein, the matter in difference shall, except where the parties elect to proceed under section 523 of the Code of Civil Procedure,² be settled on the application of either party, by a referee

Differences between promoters or lessees and authorities.

¹ Subs by the A O 1937, for "L G"

² See now the Code of Civil Procedure, 1908 (Act 5 of 1908), Sch II, para. 17

(Settlement of Differences Recovery of Tolls)

(2) Where the difference is—

- (a) between the promoter or lessee on the one hand and the ¹[Government], either as such or as the road-authority, on the other, or
- (b) between the promoter on the one hand and the local authority on the other, with respect to the sum to be paid by the local authority for an undertaking or part of an undertaking which that authority has required the promoter to sell under section 22,

the referee shall be the District Court within the jurisdiction of which the tramway is situate, or, where the tramway is within the jurisdiction of more than one District Court the District Court within the jurisdiction of which the greater part of the tramway is situate

(3) In other cases the referee shall be appointed by the ¹[Government]

(4) Except where the referee is the District Court, the powers and procedure of the referee may be prescribed

(5) In the case of a difference between a promoter on the one hand and a local authority on the other, with respect to the sum to be paid by the local authority for an undertaking or part of an undertaking which that authority has required the promoter to sell under section 22, an appeal shall lie to the High Court from the award of the referee as from an original decree of the District Court

(6) In the case of every other difference the award of the referee shall be final

Recovery of Tolls

Recovery of
moneys due
from pro-
motors and
in certain
cases, from
lessees

36. Any of the following moneys, namely, any rent due to a local authority from a lessee, any penalty recoverable from a promoter or lessee under an order, any sum payable by a promoter or lessee under an award of a referee, the cost of the performance under this Act by the ¹[Government] or by a local authority or road-authority of any work required by this Act or by an order to be done by a promoter, and the cost incurred by a road-authority in removing a tramway and reinstating a road under this Act, may, without prejudice to any other remedy that the authority to which the money is due may have by suit or otherwise, be recovered by that authority, on application made in this behalf to the Collector, as if the sum due were an arrear of land-revenue due by the promoter or lessee or his surety (if any)

Provided that nothing in this section shall authorize the arrest of the promoter or lessee or his surety in execution of any process issued by the Collector.

¹ Subs by the A O 1937, for "L. G."

(Recovery of Tolls. Savings)

37 (1) If a licensee fails to pay on demand the tolls due for the use of a tramway, the promoter or lessee to whom the tolls are due may, without prejudice to the remedy which he may have by suit, apply to a Magistrate to recover the amount of the tolls, and the Magistrate may, after giving notice to the licensee, if possible, and allowing him an opportunity of being heard, proceed to recover the amount by distress and sale of any carriages or other moveable property of the licensee which may be found on the tramway or on premises connected therewith

Recovery of
tolls from
licensees

(2) When a licensee has failed to pay on demand the tolls due from him, the promoter or lessee to whom the tolls are due may seize any carriage or other moveable property of the licensee on the tramway or on premises connected therewith, and detain the same for forty-eight hours unless the tolls are sooner paid

(3) When application is made to a Magistrate under sub-section (1), he may make an interim order of distraint pending his final decision

38. Any tolls due to a promoter, lessee or licensee from a passenger may be recovered either by suit or, on application to a Magistrate having jurisdiction within any local area in which any part of the tramway is laid, by distress and sale of any moveable property belonging to the passenger within the local limits of the jurisdiction of the Magistrate

Recovery of
tolls from
passengers

Savings

39. (1) Notwithstanding anything contained in this Act, or in an order or any rule made under this Act, a promoter shall not acquire any right other than that of user only over a road along or across which he lays a tramway, nor shall anything contained in this Act, or in an order or any rule made under this Act, exempt the promoter of a tramway, or any other person using the tramway, from the payment of such charges as may lawfully be levied in respect of the use of a road or bridge along or across which the tramway is laid

Promoter to
have right of
user only

(2) The ¹~~Provincial~~ ^{State} Government may, if it thinks fit, fix rates at which a promoter, lessee or licensee may compound for the charges payable in respect of the use of a road or bridge.

40. (1) Nothing in this Act, or in an order or any rule made under this Act, shall take away or abridge any power which a road-authority, local authority or other person has by law to break up, widen, alter, divert or improve a road, railroad or tramway along or across which a tramway is laid

Saving of
power over
roads
traversed by
tramways

(2) The road-authority, local authority or other person executing any work referred to in sub-section (1) shall not be liable to pay to a promoter, lessee or licensee any compensation for injury done to a tramway by the execution of the work or for loss of traffic occasioned by the reasonable use of any power lawfully exercised for the execution thereof

¹ Subs by the A O 1937, for "L G"

(Savings Supplemental Provisions)

Saving of power of local authority and police to regulate traffic on roads

41. Nothing in this Act, or in an order or any rule made under this Act, shall affect the powers of a local authority or of a Magistrate or police-officer to regulate the passage of traffic along or across a road along or across which a tramway is laid, and the authority, Magistrate or officer aforesaid may exercise its or his powers as well on as off the tramway and with respect as well to the traffic of a promoter, lessee or licensee as to the traffic of other persons.

Supplemental Provisions

Promoters, lessees and licensees to be responsible for all injuries

42. A promoter, lessee or licensee shall be answerable for all injuries happening through his act or default or through the act or default of any person in his employment, by reason or in consequence of any of his carriages or works, and shall save harmless all authorities and persons collectively and individually, and their officers and servants, from all damages and costs in respect of injuries so happening

Want of funds not a sufficient reason for default

43. For the purposes of this Act want of funds shall not be deemed to be a sufficient reason for the suspension of the construction, or the discontinuance of the working, of a tramway by a promoter or lessee.

Power to exempt from municipal taxation

44. When a tramway is constructed under this Act within the limits of a municipality, the ¹[~~Provincial~~ *State* Government] may exempt the animals, plant, rolling-stock, yards, workshops, engine-sheds, ²[electrical generating stations or sub-stations] and depôts of the promoter, lessee or licensee, for such period as it thinks fit, from all or any municipal taxes leviable within those limits

Application by local authorities of local funds to tramways

45. (1) The fund to or with the control or management of which the local authority of a municipality, cantonment or district is entitled or entrusted shall, notwithstanding anything in any enactment respecting the purposes to which that fund may be applied, be applicable, subject to the control of the ¹[appropriate Government], to the payment of expenses incidental to the exercise of the powers and functions which may be vested in, or exercised by, a local authority under this Act

(2) The fund shall also be applicable, with the previous sanction of the ¹[appropriate Government], to a guarantee of the payment of interest on money to be applied, with the concurrence in writing of the local authority, within the limits of the local area under its control, to any of the purposes to which the fund might be applied by the local authority under sub-section (1).

³[(3) In this section 'the appropriate Government' means the Government, Central or ~~Provincial~~ *State*, whose executive authority extends over the local authority in question]

Extension of Act to existing tramways

46. The ¹[Government] may, with the consent of the local authority and road-authority and of the promoter and his lessee (if any), extend any

¹ Subs by the A O 1937, for "L G"

² Ins by s 7 of the Indian Tramways (Amendment) Act, 1911 (5 of 1911).

³ Ins by the A O 1937

(Supplemental Provisions)

1886 : Act XVII.]

Jhansi and Morar.

part of this Act, or any rules made under this Act, either with or without modification, to the whole or any part of a tramway constructed, or authorized by the ¹[Government] to be constructed, before the passing of this Act, and may withdraw any part of the Act or any rules so extended.

47. (1) A tramway of which the construction has not been authorized by the ¹[Government] before the passing of this Act shall not, after the passing of this Act, be constructed for public traffic in any place to which this Act extends, except in pursuance of an order made under this Act

Prohibition of construction of tramways except under this Act

(2) A person constructing a tramway in contravention of sub-section (1) of this section,

or after the passing of this Act maintaining or using for public traffic, otherwise than in pursuance of an order made under this Act, a tramway which was not constructed, or authorized by the ¹[Government] to be constructed, before the passing of this Act,

shall be liable, on the complaint of the ¹[Government] or local authority, to double the penalty to which a promoter acting otherwise than in accordance with an order is liable under section 27.

48. If at any time a local area comprising a tramway to which this Act or any part thereof or any rule thereunder applies ceases to be included in the circle of a local authority, the functions of that authority under this Act, or the part thereof or the rule thereunder, and under the order (if any), shall, in respect of that local area, devolve on the ¹[Government] or, if that Government so directs, on the local authority of the circle in which the tramway has been included.

Transfer of control on exclusion of local area from circle of local authority.

49. [Explanation and amendment of section 54 of Railway Act] Rep. by the Indian Railways Act, 1890 (IX of 1890), s 2 and Sch I.

50. All powers conferred by this Act on ²[any Government] may be exercised from time to time as occasion requires

Powers of Government exercisable from time to time

THE JHANSI AND MORAR ACT, 1886

ACT No XVII OF 1886.³

[17th September, 1886]

An Act to annex the Town and Fort of Jhansi and certain adjacent Territory to the Jhansi District, and for certain other purposes.

1. (1) This Act may be called the Jhansi and Morar Act, 1886; and Short title.

¹ Subs by the A O 1937, for "L G"

² Subs by the A O 1937, for "a L G"

³ For Statement of Objects and Reasons, see Gazette of India, 1886, Pt. V, p. 824, and for Proceedings in Council, see *ibid.* Supplement, pp 1192 and 1279

and commence-
ment

(2) It shall come into force on a date¹ to be appointed in this behalf by the ²[Provincial Government] of the North-Western Provinces,³ which date is in this Act referred to as the commencement of this Act

PART I

Whereas since the beginning of March, 1886, the town and fort of Jhansi have been ceded to the British Government in full sovereignty by His Highness the Maharaja Scindia in exchange for the cantonment of Morar which has been ceded to His Highness in full sovereignty by the British Government,

And whereas the town and fort of Jhansi have been declared by the Governor General in Council to be subject to the Lieutenant-Governorship of the North-Western Provinces,

And whereas it is proposed that certain lands adjacent to the Jhansi District should be ceded to the British Government in full sovereignty by His Highness in exchange for certain other lands to be ceded to His Highness in full sovereignty by the British Government,

And whereas it is expedient that the town and fort of Jhansi, and the lands to be ceded to the British Government, should be annexed to the Jhansi District, and that the law in force therein should be the same as the law in force in that district,

* * * * *

It is hereby enacted as follows —

Annexation
of ceded
lands to
Jhansi
District

2 The town and fort of Jhansi, and the lands which may be ceded to the British Government in accordance with the proposal referred to in the preamble to this Part, shall, in the case of the town and fort, from the commencement of this Act, and, in the case of any of the lands, from the date of the cession thereof, be deemed to be part of the Jhansi District

Assimilation of
law in force in
ceded lands
to law in force
in Jhansi
District

3 All enactments which at the commencement of this Act, or at the date of the cession of any of the lands referred to in the last foregoing section, are or shall be in force in the Jhansi District and not in the town and fort of Jhansi or in those lands, shall then come into force in the town and fort or in those lands, as the case may be

4. [*Ceded lands to become part of the scheduled district of Jhansi*] Rep by the United Provinces Act, 1890 (XX of 1890), s 8 (2)

¹ The 15th December, 1886—see North-Western Provinces and Oudh Gazette (Extraordinary), dated 14th December, 1886

² Subs by the A O 1937, for "Lieutenant-Governor"

³ Now the U P

⁴ The last paragraph of the preamble to Part I was rep by the United Provinces Act, 1890 (20 of 1890), s 8 (2), *infra*. That paragraph ran as follows —

"And whereas it is also expedient that the town and fort, and the lands which may be ceded to the British Government, should, for the purposes of the Scheduled Districts Act, 1874, form part of the Jhansi District"

5. All acts of executive authority, proceedings, decrees and sentences which have been done, taken or passed in or with respect to the town and fort of Jhansi since the beginning of March, 1886, and before the commencement of this Act, by any officer of the Government, or by any person acting under his authority or otherwise in pursuance of an order of the Government, or which have been or shall be ratified by the ¹[Provincial Government] of the North-Western Provinces,² shall be as valid and operative as if they had been done, taken or passed in accordance with law, and no suit or other proceeding shall be maintained or continued against any person whatever on the ground that any such acts, proceedings, decrees or sentences were not done, taken or passed in accordance with law

Validation of
acts done
since the
beginning of
March, 1886

PART II

And whereas it is expedient that decrees and orders passed by the Civil and Revenue Courts of His Highness in cases which would have been cognizable by the Civil and Revenue Courts of the Jhansi District under the Code of Civil Procedure³ or the Jhansi Courts Act, 1867,⁴ or the North-Western Provinces Rent Act, 1881,⁵ if the territory ceded by His Highness had been part of the Jhansi District at the time of the institution of the cases, should be capable of being executed as if they had been made by the Courts of the Jhansi District,

And whereas the period of limitation prescribed for suits in the territories of His Highness is twelve years, and it is expedient that persons having just claims which, but for the cession of territory, they might have enforced in the Courts of His Highness, should not be debarred from enforcing those claims by reason of a shorter period of limitation being prescribed for any class of suits by the law in force in the Jhansi District,

And whereas it is expedient that suits pending in the Courts of His Highness and left undetermined by those Courts by reason of cession of territory should be continued in the Courts of the Jhansi District,

And whereas it is expedient to remove doubts as to the effect of the law in force in the Jhansi District with respect to registration and stamps on documents and instruments to which at the time of their execution the law of His Highness applied and the law of ⁶[the Provinces] did not apply,

It is hereby further enacted as follows —

6. (1) An application for the execution of a decree or order passed by a Civil or Revenue Court of His Highness in any such case as is referred to in

Execution of
decrees of
Gwalior
Courts

¹ Subs by the A O 1937, for "Lieutenant-Governor"

² Now the U P

³ See now the Code of Civil Procedure, 1908 (5 of 1908)

⁴ Act 18 of 1867 was rep by the United Provinces Act, 1890 (20 of 1890), s 5 (2)

⁵ Act 12 of 1881 was rep by the Agra Tenancy Act, 1901 (U P. 2 of 1901) which in turn was rep by the Agra Tenancy Act, 1926 (U P 3 of 1926).

⁶ Subs by the A O. 1948, for "British India".

the first clause of the preamble to this Part may, with the previous sanction of the Deputy Commissioner,¹ be made to any Court¹ in the Jhansi District subordinate to the Court of the Commissioner which may be specified by the Deputy Commissioner¹ in that behalf in his order giving the sanction

(2) If in any case the Deputy Commissioner¹ is of opinion that for special reasons the sanction ought to be withheld or ought to be granted subject to conditions, he may either withhold his sanction or permit the application to be made on any conditions which in the circumstances he deems it proper to impose, but in either of those cases he shall record the reasons in writing

(3) The fact that an application is barred by the Indian Limitation Act, 1877,² may be sufficient cause for withholding sanction to the making of the application, but in any case in which the holder of the decree or order has been debarred from enforcing it by reason of the cession of the town and fort of Jhansi to the British Government, and to which the Deputy Commissioner¹ sees fit to apply the provisions of that Act, the Deputy Commissioner¹ shall, in computing the period of limitation, exclude therefrom the time which has elapsed between the cession of the town and fort and the commencement of this Act XV of 1877.

(4) Subject to revision by the Commissioner of the Jhansi Division, an order of the Deputy Commissioner¹ sanctioning or refusing to sanction the making of an application under this section, or imposing conditions with respect thereto, shall be final

Extension of
period of
limitation for
certain suits.

7. (1) Notwithstanding anything in the Indian Limitation Act, 1877,² XV of 1877 or in any other enactment, the Deputy Commissioner¹ may, within such term, not exceeding two years from the commencement of this Act, as the ³[Provincial Government] may prescribe in this behalf, admit any suit of a nature cognizable by the Courts of ⁴[the Provinces], which, if there had not been a cession of territory and the suit had been instituted in a Court of His Highness having jurisdiction with respect thereto, would not be liable to be dismissed by that Court by reason of its being barred by any law of limitation

(2) In the computation of the period of limitation for a suit referred to in sub-section (1) which the plaintiff has been debarred from instituting by reason of the cession of the town and fort of Jhansi to the British Government there shall be excluded from the period the time which has elapsed between the cession of the town and fort and the commencement of this Act

¹ The functions assigned to the Deputy Commissioner and the Commissioner by this Act are now discharged by the District Judge and the High Court, respectively, and the references to Courts in the Jhansi District subordinate to the Court of the Commissioner are deemed to apply to the Civil Courts established in that district under the Bengal, Agra and Assam Civil Courts Act, 1887 (12 of 1887), see the United Provinces Act, 1890 (20 of 1890), s. 7

² See now the Indian Limitation Act, 1908 (9 of 1908)

³ Subs. by the A. O. 1937, for "L. G."

⁴ Subs. by the A. O. 1948, for "British India"

(3) Subject to revision by the ¹Commissioner of the Jhansi Division, an order of the Deputy Commissioner¹ admitting or refusing to admit a suit under sub-section (x) shall be final

8. An original suit pending in a Court of His Highness and left undetermined by that Court by reason of cession of territory may be continued, under the law of limitation applicable to that Court, but otherwise in accordance with the law and procedure of British Indian Courts, in any Court¹ in the Jhansi District subordinate to the Court of the Commissioner which the Deputy Commissioner¹ may appoint in that behalf

Continuance
of pending
suits

9. The provisions of the law of ²[the Provinces] with respect to the consequences of documents being unregistered or instruments being unstamped shall not apply to any document or instrument which may have been executed before a date³ to be prescribed in this behalf by the ⁴[Provincial Government] and to which the law of His Highness applied, and the law of ²[the Provinces] did not apply, at the time of its execution

Saving in
favour of
unregistered
documents
and unstamped
instruments

PART III.

And whereas it is expedient that traders and others who were entitled immediately before the cession of the cantonment of Morar to institute certain suits in, or make applications for or with respect to the execution of certain decrees to, a Civil Court at Morar should be enabled to institute those suits in, and make those applications to, the Civil Courts at Jhansi and Agra, and at any other place from time to time appointed in this behalf by the Governor General in Council, and that the period of limitation in these cases should be extended,

It is hereby further enacted as follows —

10. (x) Any person who at the date of the cession of the cantonment of Morar was entitled to institute in a Civil Court at Morar a suit of any of the descriptions referred to in articles 50 to 54 (both inclusive) or articles 56 to 64 (both inclusive) or articles 66 to 75 (both inclusive) of the second schedule to the Indian Limitation Act, 1877,⁵ or to make to any such Court an application for or with respect to the execution of a decree in any such suit, may institute the suit or make the application in any Civil Court at Jhansi or Agra, or other place appointed in that behalf by the ⁶[Provincial Government] which would have jurisdiction in the suit to be instituted, or, as the case may be, would have had jurisdiction in the suit in which the decree to

Suits for debt
formerly
cognizable in a
Morar Court to
be cognizable
in Courts
at certain
other places

¹ See foot-note 1 on p 272, *supra*.

² Subs by the A O 1948, for "British India"

³ For date so prescribed, see the North-Western Provinces and Oudh Gazette, Extraordinary, dated the 15th December, 1890.

⁴ Subs by the A O 1937, for "L. G."

⁵ See now the Indian Limitation Act, 1908 (9 of 1908).

⁶ Subs. by the A O 1937, for "G. G. in C."

be executed was passed, if the cause of action had arisen within the local limits of its jurisdiction

(2) Notwithstanding anything in any enactment or notification to the contrary, any Civil Court at Jhansi or Agra, or other place aforesaid, in which any such suit or application as is referred to in sub-section (1) is instituted or made shall, subject to the provisions of that sub-section, have jurisdiction to dispose of it

(3) In computing the period of limitation for any suit or application referred to in this section, the time which has elapsed between the date of the cession of the cantonment of Morar and the commencement of this Act shall be excluded

THE OUDH WASIKAS ACT, 1886.

ACT No XXI OF 1886 ¹

[24th September, 1886]

An Act to declare certain allowances collectively known as Oudh Wasikas to be pensions within the meaning of the Pensions Act, 1871.

WHEREAS, on the death of Her Highness the Bahu Begam, His Highness the Nawab Vazir of Oudh delivered to the British Government a sum of money with intent that the interest accruing thereon should, in compliance with the wishes of Her Highness the Bahu Begam as expressed in a Deed of Deposit executed by her in the year 1813, be applied by the British Government to the payment of certain pensions, which pensions are known as the Amanat Wasikas ;

And whereas in the year 1813 the said Government guaranteed the payment of certain pensions to persons connected with the Khas Mahal of Her Highness the Bahu Begam, which pensions are known as the Zamanat Wasikas ;

And whereas, in the years 1814, 1825 and 1838, loans, known respectively as the 1st, 3rd and 6th Oudh loans, were made by the Rulers of Oudh to the Honourable the East India Company with intent that the interest accruing thereon should be applied by the said Government to the payment of certain pensions, which pensions are known as the Loan Wasikas ,

And whereas the Amanat, Zamanat and Loan Wasikas have been regarded as pensions to which the Pensions Act, 1871, applies, and rules XXIII of 1871 respecting them have been made and published under section 14 of this Act ;

¹ For Statement of Objects and Reasons, see Gazette of India, 1886, Pt V, p. 513 ; for Report of the Select Committee, see *ibid.*, Pt IV, p. 291, and for Proceedings in Council, see *ibid.*, Supplement, pp 905, 966, 1283 and 1338.

(Part I—Suits relating to Land.)

And whereas, since the making and publication of the rules, doubt has been expressed whether the said Wasikas are pensions within the meaning of the Pensions Act, 1871;
XXIII of 1871

And whereas it is expedient to declare them to be pensions within the meaning of that Act,

It is hereby enacted as follows —

1. This Act may be called the Oudh Wasikas Act, 1886

Short title

2. The allowances respectively known as the Amanat Wasikas, the Zamanat Wasikas and the Loan Wasikas are pensions within the meaning of the Pensions Act, 1871, and that Act shall apply to them as if they were pensions of the classes referred to in sections 4 and 11 of that Act
XXIII of 1871

Application of Act XXIII of 1871 to Wasikas

THE SUITS VALUATION ACT, 1887.

ACT No VII OF 1887¹

[11th February, 1887.]

An Act to prescribe the mode of valuing certain suits for the purpose of determining the jurisdiction of Courts with respect thereto

WHEREAS it is expedient to prescribe the mode of valuing certain suits for the purpose of determining the jurisdiction of Courts with respect thereto, It is hereby enacted as follows —

1. This Act may be called the Suits Valuation Act, 1887

Title.

PART I

SUITS RELATING TO LAND

2. This Part shall extend to such local areas, and come into force there- Extent and
in on such dates, as the ²[Provincial Government] by notification in the commencement
³[Official Gazette], directs ⁴ of Part I

to a part A state or part C state

¹ For Statement of Objects and Reasons, see Gazette of India, 1886, Pt V, p 791, for Report of the Select Committee, see *ibid*, 1887, Pt IV, p. 18, and for Proceedings in Council, see *ibid*, 1886, Supplement, pp 1131 and 1155, and *ibid*, 1887, Pt VI, pp 16 and 21.

This Act has been amended in the Punjab by Punjab Acts 1 of 1938 and 13 of 1942 and in the U P by U P Act 7 of 1939.

² Subs by the A O 1937, for "G G in C."

³ Subs by the A O 1937, for "Gazette of India"

⁴ Part I of the Act has, under s 2, been declared to extend to the Punjab, and to come into force therein on the 1st day of March, 1889, see Gazette of India, 1889, Pt I, p 107

(Part I —Suits relating to Land Part II —Other Suits)

Power for
Provincial
Government
to make rules
determining
value of land
for jurisdic-
tional purposes

3. (1) The ^{State} ~~Provincial~~ Government may ^{** * * *} make rules for determining the value of land for purposes of jurisdiction in the suits mentioned in the Court-fees Act, 1870, section 7, paragraphs v and vi, and paragraph x, clause (d) VII of 1870

(2) The rules may determine the value of any class of land, or of any interest in land, in the whole or any part of a local area and may prescribe different values for different places within the same local area.

Valuation of
relief in
certain suits
relating to
land not to
exceed the
value of the
land

4. Where a suit mentioned in the Court-fees Act, 1870, section 7, paragraph iv, or Schedule II, article 17, relates to land or an interest in land of which the value has been determined by rules under the last foregoing section, the amount at which for purposes of jurisdiction the relief sought in the suit is valued shall not exceed the value of the land or interest as determined by those rules

Making and
enforcement
of rules

5. (1) The ^{State} ~~Provincial~~ Government shall, before making rules under section 3, consult the High Court with respect thereto

(2) A rule under that section shall not take effect till the expiration of one month after the rule has been published in the ^{Official Gazette}

Repeal of
section 14
of the Madras
Civil Courts
Act, 1873

6. On and from the date on which rules under section 3 take effect in any part of the territories under the administration of the Governor of Fort Saint George in Council to which the Madras Civil Courts Act, 1873, extends, III of 1873 section 14 of that Act shall be repealed as regards that part of those territories

PART II

OTHER SUITS

Extent and
commencement
of Part II

7. This Part extends to ^{whole} ~~all~~ the Provinces of India, ^{except part B Staty} and shall into force on the first day of July, 1887

Court-fee
value and
jurisdictional
value to be
the same in
certain suits.

8. Where in suits other than those referred to in the Court-fees Act, VII of 1870 1870, section 7, paragraphs v, vi and ix, and paragraph x, clause (d), court-fees are payable *ad valorem* under the Court-fees Act, 1870, the value as determinable for the computation of court-fees and the value for purposes of jurisdiction shall be the same

Determination
of value of cer-
tain suits by
High Court

9. When the subject-matter of suits of any class, other than suits mentioned in the Court-fees Act, 1870, section 7, paragraphs v and vi, and VII of 1870 paragraph x, clause (d), is such that in the opinion of the High Court it does

¹ Subs by the A O 1937, for "L G"

² The words "[subject to the control] of the G G in C" rep by the A O 1937 The words in brackets were subs by the Devolution Act, 1920 (38 of 1920), s 2 and Sch. I, for "with the previous sanction"

³ Subs by the A O. 1937, for "local official Gazette"

⁴ Subs by the A O 1948, for "the whole of British India".

(Part II—Other Suits Part III—Supplemental Provisions)

VII of 1870

not admit of being satisfactorily valued, the High Court may, with the previous sanction of the ¹[Provincial Government], direct that suits of that class shall, for the purposes of the Court-fees Act, 1870, and of this Act and any other enactment for the time being in force, be treated as if their subject-matter were of such value as the High Court thinks fit to specify in this behalf ²

10. [Repeal of s 32, Punjab Courts Act, 1884 (XVIII of 1884)]
Rep by the Amending Act, 1891 (XII of 1891), s 2 and Sch I

PART III

SUPPLEMENTAL PROVISIONS

XIV of 1882

11 (1) Notwithstanding anything in section 578 of the ³Code of Procedure Civil Procedure, an objection that by reason of the over-valuation or under-valuation of a suit or appeal a Court of first instance or lower appellate Court which had not jurisdiction with respect to the suit or appeal exercised jurisdiction with respect thereto shall not be entertained by an appellate Court unless—

(a) the objection was taken in the Court of first instance at or before the hearing at which issues were first framed and recorded, or in the lower appellate Court in the memorandum of appeal to that Court, or

(b) the appellate Court is satisfied, for reasons to be recorded by it in writing, that the suit or appeal was over-valued or under-valued, and that the over-valuation or under-valuation thereof has prejudicially affected the disposal of the suit or appeal on its merits

(2) If the objection was taken in the manner mentioned in clause (a) of sub-section (1), but the appellate Court is not satisfied as to both the matters mentioned in clause (b) of that sub-section and has before it the materials necessary for the determination of the other grounds of appeal to itself, it shall dispose of the appeal as if there had been no defect of jurisdiction in the Court of first instance or lower appellate Court

(3) If the objection was taken in that manner and the appellate Court is satisfied as to both those matters and has not those materials before it, it shall proceed to deal with the appeal under the rules applicable to the Court with respect to the hearing of appeals; but if it remands the suit or appeal, or frames and refers issues for trial, or requires additional evidence to be

¹ Subs by the A O 1937, for "L G"

² For rules as to valuation of certain classes of suits under this section, see different local R and O

³ See now s 99 of the Code of Civil Procedure, 1908 (Act 5 of 1908).

(Part III.—Supplemental Provisions)

Provincial Small Cause Courts

[1887: Act IX]

taken, it shall direct its order to a Court competent to entertain the suit or appeal

(4) The provisions of this section with respect to an appellate Court shall, so far as they can be made applicable, apply to a Court exercising revisional jurisdiction under section 622 of the Code of Civil Procedure or other enactment for the time being in force ^{XIV of 1882} *whole except Part 3 states*

(5) This section extends to ^{whole} ~~all the~~ Provinces of India, and shall come into force on the first day of July, 1887.

Proceedings
pending at
commencement
of Part I or
Part II.

12. Nothing in Part I or Part II shall be construed to affect the jurisdiction of any Court—

- (a) with respect to any suit instituted before rules under Part I applicable to the valuation of the suit take effect, or Part II has come into force, as the case may be, or
- (b) with respect to any appeal arising out of any such suit

THE PROVINCIAL SMALL CAUSE COURTS ACT, 1887.

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² Subs by the A. O. 1948, for "the whole of British India"

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THE SECOND SCHEDULE.—SUITS EXCEPTED FROM THE COGNIZANCE OF A COURT OF SMALL CAUSES.

(Chapter I—Preliminary)

ACT No. IX OF 1887¹

[24th February, 1887]

An Act to consolidate and amend the law relating to Courts of Small Causes established beyond the Presidency-towns.

WHEREAS it is expedient to consolidate and amend the law relating to Courts of Small Causes established beyond the local limits for the time being of the ordinary original civil jurisdiction of the High Courts of Judicature at Fort William in Bengal and at Madras and Bombay. It is hereby enacted as follows.—

CHAPTER I.

PRELIMINARY

Title, extent
and com-
mencement

- 1887 1. (1) This Act may be called the Provincial Small Cause Courts Act,
 (2) It extends to ^{whole} ~~all the Provinces of India~~ ^{except part B}, and
 (3) It shall come into force on the first day of July, 1887
 2. [Repeal] *Rep partly by the Amending Act, 1891 (XII of 1891), s. 2 and Sch I, and partly by the Repealing Act, 1938 (I of 1938), s. 2 and Sch*

Savings

3. Nothing in this Act shall be construed to affect—
 (a) any proceedings before or after decree in any suit instituted before the commencement of this Act, or

¹ For Statement of Objects and Reasons, see Gazette of India, 1886, Pt V, p 8, for Report of the Select Committee, see *ibid*, 1887, Pt IV, p 33; and for Proceedings in Council see *ibid*, 1886, Supplement, pp 8 and 9, and *ibid*, 1887, Pt VI p 25.

This Act has been declared to be in force, in Panth Piploda by the Panth Piploda Laws Regulation, 1929 (1 of 1929), s 2, in the Khondmals District by the Khondmals Laws Regulation, 1936 (4 of 1936), s 3 and Sch, and in the Angul District by the Angul Laws Regulation, 1936 (5 of 1936), s 3 and Sch.

It has been declared, under s 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the Districts of Hazaribagh, Lohardaga and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singhbhum, see Gazette of India, 1887, Pt I, p 582. The District of Lohardaga (now called the Ranchi District, see Calcutta Gazette, 1889, Pt I, p 44) included at this time the District of Palamau, which was separated in 1894.

For power to confer upon a Subordinate Judge or Munsif in Bengal, the Province of Agra and Assam, the jurisdiction of a Court of Small Causes under this Act, see the Bengal, Agra and Assam Civil Courts Act, 1887 (12 of 1887), s 25.

Ss 15, 32, 37, 38, 39 and 40 of the Bengal, Agra and Assam Civil Courts Act, 1887 (12 of 1887), apply to Courts of Small Causes constituted under this Act, see Act 12 of 1887, s 40.

The powers of a Court of Small Causes under this Act have been conferred upon the Courts of Sub-divisional Officers of the Khondmals and Angul Districts by section 13 of Regulations 4 and 5 of 1936, respectively.

² Subs by the A O 1948, for "the whole of British India."

(Chapter I—Preliminary Chapter II—Constitution of Courts
of Small Causes)

XVII of 1879

- (b) the jurisdiction of a Magistrate under any law for the time being in force with respect of debts or other claims of a civil nature, or of village-munsifs or village-pancháyats, under the provisions of the Madras Code, or of village-munsifs under the Dekkan Agriculturists' Relief Act, 1879, or

XIV of 1882

- (c) any local law or any special law other than the Code of Civil Procedure¹ —

4 In this Act, unless there is something repugnant in the subject or context, "Court of Small Causes" means a Court of Small Causes constituted under this Act, and includes any person exercising jurisdiction under this Act in any such Court

CHAPTER II

CONSTITUTION OF COURTS OF SMALL CAUSES

5 (r) The ^{state} ~~Provincial~~ Government] ^{Establishment of Courts of Small Causes} * * * may, by order in writing, establish a Court of Small Causes at any place within the territories under its administration beyond the local limits for the time being of the ordinary original civil jurisdiction of a High Court of Judicature established in a Presidency-town

(2) The local limits of the jurisdiction of the Court of Small Causes shall be such as the ^{state} ~~Provincial~~ Government] may define, and the Court may be held at such place or places within those limits as the ^{state} ~~Provincial~~ Government] may appoint⁴.

⁵[6 When a Court of Small Causes has been established there shall be Judge appointed, by order in writing, a Judge of the Court

Provided that if the ~~Provincial~~ Government so direct, the same person shall be the Judge of more than one such Court]

7 (r) A Judge who is the Judge of two or more such Courts may, with the sanction of the District Court, fix the times at which he will sit in each of the Courts of which he is Judge

(2) Notice of the times shall be published in such manner as the High Court from time to time directs

8. ^{state} ~~Provincial~~ Government] so direct, there may be appointed, by order in writing, Additional Judges of a Court of Small Causes or of two or more such Courts]

¹ See now the Code of Civil Procedure, 1908 (Act 5 of 1908)

² Subs by the A O 1937, for "L G"

³ The words "with the previous sanction of the G G in C" rep by the Decentralization Act, 1914 (4 of 1914), s 2 and Sch, Pt I

⁴ For notifications issued under cl (2) of s 5, see different local R and O

⁵ Subs by the A O 1937, for the original section

⁶ Subs by the A O 1937, for the original sub-section

(Chapter II—Constitution of Courts of Small Causes)

(2) ¹[An Additional] Judge shall discharge such of the functions of the Judge of the Court or Courts as the Judge may assign to him, and in the discharge of those functions shall exercise the same powers as the Judge

(3) The Judge may withdraw from ¹[an Additional] Judge any business pending before him

(4) When the Judge is absent, the ²[senior] Additional Judge may discharge all or any of the functions of the Judge

9. [Suspension and removal of Judges] Rep by the A O 1937

Power to
require two
Judges to sit
as a bench

10 The ³~~Provincial~~ ^{State} Government], after consultation with the High Court, may, by order in writing, direct that two Judges of Courts of Small Causes or a Judge and an Additional Judge of a Court of Small Causes shall sit together for the trial of such class or classes of suits or applications cognizable by a Court of Small Causes as may be described in the order

Decision in
case heard
by a bench

11 (1) If two Judges, or a Judge and an Additional Judge, sitting together under the last foregoing section, differ as to a question of law or usage having the force of law, or in construing a document the construction of which may affect the merits, they shall draw up and refer, for the decision of the High Court, a statement of the facts of the case and of the point on which they differ in opinion, and the provisions of ⁴Chapter XLVI of the Code of Civil Procedure shall apply to the reference.

XIV of 1882.

(2) If they differ on any matter other than a matter specified in sub-section (1), the opinion of the Judge who is senior in respect of date of appointment as Judge of a Court of Small Causes, or, if one of them is an Additional Judge, then the opinion of the Judge sitting with him, shall prevail.

(3) For the purposes of sub-section (2), a Judge permanently appointed shall be deemed to be senior to an officiating Judge

Registrar.

⁵12. ⁶[(1) There may be appointed to a Court of Small Causes an officer to be called the Registrar of the Court]

(2) Where a Registrar is appointed, he shall be the chief ministerial officer of the Court.

¹ Subs by the Repealing and Amending Act, 1915 (11 of 1915), s 2 and Sch I for "the Additional"

² Ins by s 2 and Sch I, *ibid*

³ Subs by the A O, 1937, for "L G"

⁴ See now ss 113 and 115 and the first Schedule, Order XLVI, of the Code of Civil Procedure, 1908 (Act 5 of 1908)

⁵ This section has been amended in its application to the Bombay Presidency by the Provincial Small Cause Courts (Bombay Amendment) Act, 1930 (Bom 6 of 1930), s 2

⁶ Subs by the A O 1937, for the original sub-section which read "(1) The L G, may appoint to a Court of Small Causes an officer to be called the Registrar of the Court"

(Chapter II—*Constitution of Courts of Small Causes* Chapter III—*Jurisdiction of Courts of Small Causes*)

(3) The ^{State}~~Provincial~~ Government may, by order in writing, confer upon a Registrar, within the local limits of the jurisdiction of the Court, the jurisdiction of a Judge of a Court of Small Causes for the trial of suits of which the value does not exceed twenty rupees

(4) The Registrar shall try such suits cognizable by him as the Judge may, by general or special order, direct

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*

*

*

13. [Other ministerial officers] Rep by the A O 1937

14 (1) The ministerial officers of a Court of Small Causes shall, in addition to any duties mentioned in this Act, or in any other enactment for the time being in force, as duties which are or may be imposed on any of them, discharge such duties of a ministerial nature as the Judge directs

Duties of
ministerial
officers

(2) The High Court may make rules consistent with this Act, and with any other enactment for the time being in force, conferring and imposing on the ministerial officers³ of a Court of Small Causes such powers and duties as it thinks fit, and regulating the mode in which powers and duties so conferred and imposed are to be exercised and performed

CHAPTER III

JURISDICTION OF COURTS OF SMALL CAUSES

15. (1) A Court of Small Causes shall not take cognizance of the suits specified in the second schedule as suits excepted from the cognizance of a Court of Small Causes

Cognizance
of suits by
Courts of
Small Causes

(2) Subject to the exceptions specified in that schedule and to the provisions of any enactment for the time being in force, all suits of a civil nature of which the value does not exceed five hundred rupees shall be cognizable by a Court of Small Causes.

(3) Subject as aforesaid, the ^{State}~~Provincial~~ Government may, by order in writing, direct that all suits of a civil nature of which the value does not exceed one thousand rupees shall be cognizable by a Court of Small Causes mentioned in the order⁴

16. Save as expressly provided by this Act or by any other enactment for the time being in force, a suit cognizable by a Court of Small Causes shall

Exclusive
jurisdiction
of Courts of
Small Causes.

¹ Subs by the A O 1937, for "L G"

² Sub-section (5), which read "A Registrar may be suspended or removed from office by the L G" rep by the A O 1937

³ For instance of a notification issued under this power, see Bom R & O, Vol I

⁴ For notifications issued under this section, see different local R and O

(Chapter III — Jurisdiction of Courts of Small Causes

Chapter IV — Practice and Procedure)

not be tried by any other Court having jurisdiction within the local limits of the jurisdiction of the Court of Small Causes by which the suit is triable

CHAPTER IV

PRACTICE AND PROCEDURE

Application
of the Code
of Civil Pro-
cedure

17. (1) ¹[The procedure prescribed in the Code of Civil Procedure, V of 1908 shall, save in so far as is otherwise provided by that Code or by this Act,] be the procedure followed in a Court of Small Causes in all suits cognizable by it and in all proceedings arising out of such suits

Provided that an applicant for an order to set aside a decree passed *ex parte* or for a review of judgment shall, at the time of presenting his application, either deposit in the Court the amount due from him under the decree or in pursuance of the judgment, or give ²[such security for the performance of the decree or compliance with the judgment as the Court may, on a previous application made by him in this behalf, have directed].

(2) Where a person has become liable as surety under the proviso to sub-section (1), the security may be realized in manner provided by section ³[145] of the Code of Civil Procedure, ⁴[1908]

Trial of
suits by
Registrar

18. (1) Suits cognizable by the Registrar under section 12, sub-sections (3) and (4), shall be tried by him and decrees passed therein shall be executed by him, in like manner in all respects as the Judge might try the suits, and execute the decrees, respectively

(2) The Judge may transfer to his own file, or to that of the Additional Judge if an Additional Judge has been appointed, any suit or other proceeding pending on the file of the Registrar

Admission,
return and
rejection of
plants by
Registrar

19. (1) When the judge of a Court of Small Causes is absent, and an Additional Judge has not been appointed or, having been appointed, is also absent, the Registrar may admit a plant, or return or reject a plant for any reason for which the Judge might return or reject it

(2) The Judge may, of his own motion or on the application of a party, return or reject a plant which has been admitted by the Registrar, or admit a plant which has been returned or rejected by him

Provided that where a party applies for the return or rejection or the admission of a plant under this sub-section, and his application is not made

¹ Subs by the Small Cause Courts (Attachment of Immoveable Property) Act, 1926 (1 of 1926), s 2, for the original words

² Subs by the Provincial Small Cause Courts (Amendment) Act, 1935 (9 of 1935), s 2, for "security to the satisfaction of the Court for the performance of the decree or compliance with the judgment, as the Court may direct"

³ Subs by s 2 of Act 1 of 1926 for "253"

⁴ Ins by s 2, *ibid*

(Chapter IV —Practice and Procedure)

at the first sitting of the Judge after the day on which the Registrar admitted, or returned or rejected, the plaint, the Judge shall dismiss the application unless the applicant satisfies him that there was sufficient cause for not making the application at that sitting

20. (1) If, before the date appointed for the hearing of a suit, the defendant or his agent duly authorized in that behalf appears before the Registrar and admits the plaintiff's claim, the Registrar may, if the Judge is absent, and an Additional Judge has not been appointed or, having been appointed, is also absent, pass against the defendant, upon the admission, a decree which shall have the same effect as a decree passed by the Judge

Passing of
decrees by
Registrar on
confession

(2) Where a decree has been passed by the Registrar under sub-section (1), the Judge may grant an application for review of judgment, and re-hear the suit, on the same conditions, on the same grounds and in the same manner as if the decree had been passed by himself.

21. (1) If the Judge is absent, and an Additional Judge has not been appointed or, having been appointed, is also absent, the Registrar may, subject to any instructions which he may have received from the Judge or, with respect to decrees or orders made by an Additional Judge, from the Additional Judge, make any orders in respect of applications for the execution of decrees and orders made by the Court of which he is Registrar, or sent to that Court for execution, which the Judge might make under this Act

Execution
of decrees by
Registrar

(2) The Judge, in the case of any decree or order with respect to the execution of which the Registrar has made an order under sub-section (1), or the Additional Judge, in the case of any such decree or order which has been made by himself and with respect to which proceedings have not been taken by the Judge under this sub-section, may, of his own motion, or on application made by a party within fifteen days from the date of the order of the Registrar or of the execution of any process issued in pursuance of that order, reverse or modify the order

(3) The period of fifteen days mentioned in sub-section (2) shall be computed in accordance with the provisions of the ¹Indian Limitation Act, 1877, as though the application of the party were an application for review of judgment

of 1877

22. When the Judge of a Court of Small Causes is absent and an Additional Judge has not been appointed or, having been appointed, is also absent, the Registrar or other chief ministerial officer of the Court may exercise from time to time the power which the Court possesses of adjourning the hearing of any suit or other proceeding, and fix a day for the further hearing thereof

Adjournment
of cases by
chief ministerial
officer

¹ See now the Indian Limitation Act, 1908 (9 of 1908)

(Chapter IV —Practice and Procedure Chapter V —Supplemental Provisions)

Return of
plaints in
suits involv-
ing questions
of title

23. (1) Notwithstanding anything in the foregoing portion of this Act, when the right of a plaintiff and the relief claimed by him in a Court of Small Causes depend upon the proof or disproof of a title to immoveable property or other title which such a Court cannot finally determine, the Court may at any stage of the proceedings return the plaint to be presented to a Court having jurisdiction to determine the title

(2) When a Court returns a plaint under sub-section (1), it shall comply with the provisions of the second paragraph of 'section 57 of the Code of Civil Procedure and make such order with respect to costs as it deems just, and the Court shall, for the purposes of the 'Indian Limitation Act, 1877, be XV of 1877 deemed to have been unable to entertain the suit by reason of a cause of a nature like to that of defect of jurisdiction

Appeal from
certain orders
of Courts of
Small Causes

24. Where an order specified in ³[clause (ff) or clause (h) of sub-section (1) of section 104 of the Code of Civil Procedure, 1908,] is made by a Court of Small Causes, an appeal therefrom shall lie to the District Court ^{V of 1908} [on any ground on which an appeal from such order would lie under that section].

Revision of
decrees and
orders of
Courts of
Small Causes

25. The High Court, for the purpose of satisfying itself that a decree or order made in any case decided by a Court of Small Causes was according to law, may call for the case and pass such order with respect thereto as it thinks fit

26. [Amendment of the second schedule to the Code of Civil Procedure] Rep by the Presidency Small Cause Courts Law Amendment Act, 1888 (X of 1888), s 4

Finalty of
decrees and
orders

27. Save as provided by this Act, a decree or order made under the foregoing provisions of this Act by a Court of Small Causes shall be final

CHAPTER V.

SUPPLEMENTAL PROVISIONS

Subordination
of Courts of
Small Causes

28. (1) A Court of Small Causes shall be subject to the administrative control of the District Court and to the superintendence of the High Court, and shall—

(a) keep such registers, books and accounts as the High Court from time to time prescribes, and

¹ See now the Code of Civil Procedure, 1908 (Act 5 of 1908), Sch I, Order VII, rule 10

² See now the Indian Limitation Act, 1908 (9 of 1908)

³ Subs by the Civil Procedure (Amendment) Act, 1922 (9 of 1922), s 5, for "section 588, clause (29), of the Code of Civil Procedure"

⁴ Ins by s 5, ibid

(Chapter V—Supplemental Provisions)

(b) comply with such requisitions as may be made by the District Court, the High Court or the ¹[~~Provincial~~ ^{State} Government] for records, returns and statements in such form and manner as the authority making the requisition directs

(2) The relation of the District Court to a Court of Small Causes, with respect to administrative control, shall be the same as that of the District Court to a Civil Court of the lowest grade competent to try an original suit of the value of five thousand rupees in that portion of the territories administered by the ¹[~~Provincial~~ ^{State} Government] in which the Court of Small Causes is established

29. A Court of Small Causes shall use a seal of such form and dimensions as are prescribed by the ¹[~~Provincial~~ ^{State} Government]. Seal

30. The ¹[~~Provincial~~ ^{State} Government] may, by order in writing, ²abolish Abolition of Courts of Small Causes a Court of Small Causes

31. (1) Nothing in this Act shall be construed to prevent ³[the appointment of] a person who is a Judge or Additional Judge of a Court of Small Causes to be also a Judge of any other ⁴Civil Court or to be a Magistrate of any class or to hold any other public office Saving of power to appoint Judge of Court of Small Causes to other office

(2) When a Judge or Additional Judge is so appointed, the ministerial officers of his Court shall, subject to any rules which the ¹[~~Provincial~~ ^{State} Government] may make in this behalf, be deemed to be ministerial officers appointed to aid him in the discharge of the duties of the other office

32. (1) So much of Chapters III and IV as relates to—

- (a) the nature of the suits cognizable by Courts of Small Causes,
- (b) the exclusion of the jurisdiction of other Courts in those suits,
- (c) the practice and procedure of Courts of Small Causes,
- (d) appeal from certain orders of those Courts and revision of cases decided by them, and
- (e) the finality of their decrees and orders subject to such appeal and revision as are provided by this Act,

applies to Courts invested by or under any enactment for the time being in force with the jurisdiction of a Court of Small Causes so far as regards the exercise of that jurisdiction by those Courts

(2) Nothing in sub-section (1) with respect to Courts invested with the jurisdiction of a Court of Small Causes applies to suits instituted or proceedings commenced in those Courts before the date on which they were invested with that jurisdiction

¹ Subs by the A O 1937, for "L G"

² For instance of a notification abolishing a Court of Small Causes (Broach), see Bombay Govt Gazette, 1907, Pt I, p 339

³ Subs by the A O 1937, for "the L G. from appointing"

⁴ For instances of notifications issued under this power, see U P R & O, Vol I.

(Chapter V —Supplemental Provisions The First Schedule)

Application
of Act and
Code to Court
so invested
as to two
Courts

33. A Court invested with the jurisdiction of a Court of Small Causes with respect to the exercise of that jurisdiction, and the same Court with respect to the exercise of its jurisdiction in suits of a civil nature which are not cognizable by a Court of Small Causes, shall, for the purposes of this Act and the ¹Code of Civil Procedure, be deemed to be different Courts

XIV of 188

Modification
of Code as
so applied

34. Notwithstanding anything in the last two foregoing sections,—

- (a) when in exercise of the jurisdiction of a Court of Small Causes, a Court invested with that jurisdiction sends a decree for execution to itself as a Court having jurisdiction in suits of a civil nature which are not cognizable by a Court of Small Causes, or
- (b) when a Court, in the exercise of its jurisdiction in suits of a civil nature which are not cognizable by a Court of Small Causes, sends a decree for execution to itself as a Court invested with the jurisdiction of a Court of Small Causes,

the documents mentioned in ²section 224 of the Code of Civil Procedure shall not be sent with the decree unless in any case the Court, by order in writing, requires them to be sent

XIV of 188

Continuance of
proceedings of
abolished
Courts

35 (1) Where a Court of Small Causes, or a Court invested with the jurisdiction of a Court of Small Causes, has from any cause ceased to have jurisdiction with respect to any case, any proceeding in relation to the case, whether before or after decree, which, if the Court had not ceased to have jurisdiction, might have been had therein, may be had in the Court which, if the suit out of which the proceeding has arisen were about to be instituted, would have jurisdiction to try the suit

(2) Nothing in this section applies to cases for which special provision is made in the ¹Code of Civil Procedure as extended to Courts of Small Causes or in any other enactment for the time being in force

XIV of 188

36. [Amendment of Indian Limitation Act] Rep by the Indian Limitation Act, 1908 (IX of 1908)

Publication
of certain
orders

37. All orders required by this Act to be made in writing by the ³[Provincial Government] shall be published in the Official Gazette

THE FIRST SCHEDULE —[ENACTMENTS REPEALED] Rep by the Amending Act, 1891 (XII of 1891), s 2 and Sch I

¹ See now the Code of Civil Procedure, 1908 (Act 5 of 1908)

² See now Order XXI, rule 6, *ibid*

³ Subs by the A O 1937, for "L G"

(The Second Schedule)

THE SECOND SCHEDULE

SUITS EXCEPTED FROM THE COGNIZANCE OF A COURT OF SMALL CAUSES

(See section 15)

- ²[(1) A suit concerning any act done or purporting to be done by or by order of the Central Government, the Crown Representative or the Provincial Government,]
- (2) a suit concerning an act purporting to be done by any person in pursuance of a judgment or order of a Court or of a judicial officer acting in the execution of his office,
- (3) a suit concerning an act or order purporting to be done or made by any other officer of the Government in his official capacity, or by a Court of Wards, or by an officer of a Court of Wards in the execution of his office,
- (4) a suit for the possession of immoveable property or for the recovery of an interest in such property;
- (5) a suit for the partition of immoveable property;
- (6) a suit by a mortgagee of immoveable property for the foreclosure of the mortgage or for the sale of the property, or by a mortgagor of immoveable property for the redemption of the mortgage;
- (7) a suit for the assessment, enhancement, abatement or apportionment of the rent of immoveable property;
- (8) a suit for the recovery of rent, other than house-rent, unless the Judge of the Court of Small Causes has been expressly invested by the ³[Provincial Government] with authority to exercise jurisdiction with respect thereto;
- (9) a suit concerning the liability of land to be assessed to land-revenue;
- (10) a suit to restrain waste;
- (11) a suit for the determination or enforcement of any other right to or interest in immoveable property;
- (12) a suit for the possession of an hereditary office or of an interest in such an office, including a suit to establish an exclusive or periodically recurring right to discharge the functions of an office;

¹ This Schedule has been amended in its application to the Bombay Presidency by s 2 of the Provincial Small Cause Courts (Bombay Amendment) Act, 1930 (Bom 6 of 1930); and by s 2 of the Provincial Small Cause Courts (Bombay Amendment) Act, 1932 (Bom 9 of 1932)

² Subs. by the A O 1937, for the original paragraph.

³ Subs. by the A O 1937, for "L. G."

(The Second Schedule)

- (13) a suit to enforce payment of the allowance or fees respectively called *māhkāna* and *hakk*, or of cesses or other dues when the cesses or dues are payable to a person by reason of his interest in immoveable property or in an hereditary office or in a shrine or other religious institution ,
- (14) a suit to recover from a person to whom compensation has been paid under the ¹Land Acquisition Act, 1870, the whole or any X of 1870 part of the compensation ,
- (15) a suit for the specific performance or rescission of a contract ,
- (16) a suit for the rectification or cancellation of an instrument ,
- (17) a suit to obtain an injunction ,
- (18) a suit relating to a trust, including a suit to make good out of the general estate of a deceased trustee the loss occasioned by a breach of trust, and a suit by a co-trustee to enforce against the estate of a deceased trustee a claim for contribution ,
- (19) a suit for a declaratory decree, not being a suit instituted under ²section 283 or section 332 of the Code of Civil Procedure , XIV of 1882
- (20) a suit instituted under section ²283 or section 332 of the Code of Civil Procedure ,
- (21) a suit to set aside an attachment by a Court or a revenue-authority, or a sale, mortgage, lease or other transfer by a Court or a revenue-authority or by a guardian ,
- (22) a suit for property which the plaintiff has conveyed while insane,
- (23) a suit to alter or set aside a decision, decree or order of a Court or of a person acting in a judicial capacity ;
- (24) a suit to contest an award ,
- (25) a suit upon a foreign judgment as defined in the Code of Civil Procedure or upon a judgment obtained in ³the Provinces , XIV of 1881
Part A state of parts state
- (26) a suit to compel a refund of assets improperly distributed under section ⁴295 of the Code of Civil Procedure ,
- (27) a suit under the ⁵Indian Succession Act, 1865, section 320 or section 321, or under the ⁶Probate and Administration Act, 1881, section 139 or section 140, to compel a refund by a person to whom an executor or administrator has paid a legacy or distributed assets ; X of 1865
V of 1881
- (28) a suit for a legacy or for the whole or a share of a residue bequeathed by a testator, or for the whole or a share of the property of an intestate ;

¹ See now the Land Acquisition Act, 1894 (1 of 1894)

² See now the Code of Civil Procedure, 1908 (Act 5 of 1908), Sch I, Order XXI, rules 63 and 100 respectively

³ Subs by the A O 1948, for " British India "

⁴ See now s 73 of Act 5 of 1908

⁵ See now the Indian Succession Act, 1925 (39 of 1925), ss. 360 and 361.

(The Second Schedule.)

(29) a suit—

- (a) for a dissolution of partnership or for the winding up of the business of a partnership after its dissolution ,
- (b) for an account of partnership-transactions , or
- (c) for a balance of partnership-account, unless the balance has been struck by the parties or their agents ,

(30) a suit for an account of property and for its due administration under decree ,

(31) any other suit for an account, including a suit by a mortgagor, after the mortgage has been satisfied, to recover surplus collections received by the mortgagee, and a suit for the profits on immoveable property belonging to the plaintiff which have been wrongfully received by the defendant,

(32) a suit for a general average loss or for salvage ,

(33) a suit for compensation in respect of collision between ships ,

(34) a suit on a policy of insurance or for the recovery of any premium paid under any such policy ,

(35) a suit for compensation—

(a) for loss occasioned by the death of a person caused by actionable wrong ,

(b) for wrongful arrest, restraint or confinement ;

(c) for malicious prosecution ,

(d) for libel ;

(e) for slander ;

(f) for adultery or seduction ,

(g) for breach of contract of betrothal or promise of marriage ,

(h) for inducing a person to break a contract made with the plaintiff ;

(i) for obstruction of an easement or diversion of a watercourse ,

¹[(n) for an act which is, or, save for the provisions of Chapter IV of the Indian Penal Code, would be, an offence punishable under Chapter XVII of the said Code;]²[(j) for illegal, improper or excessive distress, attachment or search, or for trespass committed in, or damage caused by, the illegal or improper execution of any distress, search or legal process ,](k) for improper arrest under ³Chapter XXXIV of the Code of Civil Procedure or in respect of the issue of an injunction wrongfully obtained under ³Chapter XXXV of that Code : or

XLV of 1860

XIV of 1882

¹ Ins by s 2 (x) of the Provincial Small Cause Courts (Amendment) Act, 1914 (6 of 1914)² Subs by s 2 (2), *ibid*, for the original item (j)³ See now the Code of Civil Procedure, 1908 (Act 5 of 1908), Sch I, Orders XXXVIII and XXXIX, respectively, and s 95

(The Second Schedule)

- (1) for injury to the person in any case not specified in the foregoing sub-clauses of this clause ,
- (36) a suit by a Muhammadan for exigible (*mu'ajjal*) or deferred (*mu'wajjal*) dower ,
- (37) a suit for the restitution of conjugal rights, ¹* * * * for the custody of a minor, or for a divorce ,
- (38) a suit relating to maintenance ,
- (39) a suit for arrears of land-revenue, village-expenses or other sums payable to the representative of a village-community or to his heir or other successor in title ,
- (40) a suit for profits payable by the representative of a village-community or by his heir or other successor in title after payment of land-revenue, village-expenses and other sums ,
- (41) a suit for contribution by a sharer in joint property in respect of a payment made by him of money due from a co-sharer, or by a manager of joint property, or a member of an undivided family in respect of a payment made by him on account of the property or family ,
- (42) a suit by one of several joint mortgagors of immoveable property for contribution in respect of money paid by him for the redemption of the mortgaged property ,
- (43) a suit against the Government to recover money paid under protest in satisfaction of a claim made by a revenue-authority on account of an arrear of land-revenue² or of a demand recoverable as an arrear of land-revenue ,
- ²[(43A) a suit to recover property obtained by an act which is, or, save for the provisions of Chapter IV of the Indian Penal Code, XLV of 1860, would be, an offence punishable under Chapter XVII of the said Code;]
- (44) a suit the cognizance whereof by a Court of Small Causes is barred by any enactment for the time being in force

¹ The words "for the recovery of a wife" rep by the Repealing and Amending Act, 1914 (10 of 1914), s 3 and Sch II

² Ins by s 3 of the Provincial Small Cause Courts (Amendment) Act, 1914 (6 of 1914)

THE BENGAL, AGRA AND ASSAM CIVIL COURTS
ACT, 1887

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(Chapter I—Preliminary)

ACT No XII OF 1887¹

[11th March, 1887]

An Act to consolidate and amend the law relating to Civil Courts in Bengal, the North-Western Provinces and Assam.

WHEREAS it is expedient to consolidate and amend the law relating to Civil Courts in Bengal, the North-Western Provinces and Assam, It is hereby enacted as follows —

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Bengal, ²[Agra] and Assam Civil Courts Act, 1887

Title, extent
and com-
mencement

(2) It extends to the territories ³[which were on the 11th March, 1887,] respectively administered by the Lieutenant-Governor of Bengal, the Lieutenant-Governor of the North-Western Provinces and the Chief Commissioner of Assam, except such portions of those territories as for the time being are not subject to the ordinary civil jurisdiction of the High Courts * * * * *, and

(3) It shall come into force on the first day of July, 1887

2. * * * * *

Repeal.

(2) ⁵* All Courts constituted, appointments, nominations, rules and orders made, jurisdiction and powers conferred and lists published under

¹ For Statement of Objects and Reasons, see Gazette of India, 1881, Pt V, p 1455, for Preliminary Report of the Select Committee, see *ibid.*, 1886, Pt V, p 957, for Final Report, see *ibid.*, 1887, Pt V, p 55, and for Proceedings in Council see *ibid.*, Supplement, 1881, pp 1132, 1169, 1414 and 1423, Supplement, 1886, p 1458, and Pt VI, 1887, pp 31 and 33

This Act has been declared by notification under the Scheduled Districts Act, 1874 (14 of 1874), s. 3, to be in force in the following Scheduled Districts, namely — the districts of Hazaribagh, Ranchi, Palamau and Manbhum, and Parganas Dhalbhum, the Chaibbassa Municipality, and the Porahat Estate in the district of Singhbhum in the Chota Nagpur Division. It has also been declared in force in the Angul District by the Angul Laws Regulation, 1936 (5 of 1936), s. 3 and Sch.

It is in force in the Sonthal Parganas for certain purposes, see the Sonthal Parganas Justice Regulation, 1893 (5 of 1893)

It has been extended to the Sambalpur district by the Sambalpur Civil Courts Act, 1906 (Ben 4 of 1906), and to the areas transferred to the Province of Orissa from the Madras Presidency and the Central Provinces, by the Orissa Laws Regulation, 1936 (1 of 1936), s. 4

It has been amended in its application to—

Bengal, by Ben Act 19 of 1935,

Bihar and Orissa, by B & O Act 4 of 1922;

Agra, by U P Acts 5 of 1925 and 4 of 1936; and

Assam, by Assam Act 6 of 1935

² Subs by the Bengal, Agra and Assam Civil Courts (Amendment) Act, 1911 (16 of 1911), s. 2 for "North-Western Provinces"

³ Subs by the A O 1937, for "for the time being"

⁴ The words "and except the Jhansi Division" rep by the United Provinces Act, 1890 (20 of 1890), s. 9

⁵ Sub-section (1) and the word "But" at the beginning of sub-section (2) were rep by the Amending Act, 1891 (12 of 1891), s. 2 and Sch I.

(Chapter I —Preliminary Chapter II —Constitution of Civil Courts)

the Bengal Civil Courts Act, 1871,¹ or any enactment thereby repealed, or VI of 1871, purporting expressly or impliedly to have been so constituted, made, conferred and published, shall be deemed to have been respectively constituted, made, conferred and published under this Act, and

(3) Any enactment or document referring to the Bengal Civil Courts Act, 1871,¹ or to any enactment thereby repealed, shall be construed to VI of 1871 refer to this Act or to the corresponding portion thereof

CHAPTER II

CONSTITUTION OF CIVIL COURTS

Classes of Courts

3. There shall be the following classes of Civil Courts under this Act, namely —

- (1) The Court of the District Judge,
- (2) the Court of the Additional Judge,
- (3) the Court of the Subordinate Judge, and
- (4) the Court of the Munsif

Number of District Judges, Subordinate Judges and Munsifs

²[4. The ³~~Provincial~~ Government] may alter the number of District Judges, Subordinate Judges and Munsifs now fixed]

5. [Number of Munsifs] Rep by the Decentralization Act, 1914 (IV of 1914), s 2 and Schedule, Part I

Vacancies among District or Subordinate Judges

6. (1) Whenever the office of District Judge or Subordinate Judge is vacant by reason of the death, resignation or removal of the Judge or other cause, or whenever ⁴[an increase in the number of District or Subordinate Judges has been made under the provisions of section 4], the ⁵[Provincial Government or, as the case may be, the High Court] may fill up the vacancy or appoint the Additional District Judges or Subordinate Judges * * * * *

(2) Nothing in this section shall be construed to prevent ⁶a ⁷[Provincial Government] from appointing a District Judge or Subordinate Judge to discharge, for such period as it thinks fit, in addition to the functions devolving on him as such District Judge or Subordinate Judge, all or any of the functions of another District Judge or Subordinate Judge, as the case may be.

Additional Judges

7. [Vacancies among Munsifs] Rep by the A O 1937.

8. (1) When the business pending before any District Judge requires

¹ Act 6 of 1871 rep by s 2 (1) of this Act

² Subs by the Devolution Act, 1920 (38 of 1920), s 2 and Sch I, for the original section

³ Subs by the A O 1937, for "L G"

⁴ Subs by Act 38 of 1920, s 2 and Sch I, for "the G G in C has sanctioned an increase of the number of District Judges or Subordinate Judges".

⁵ The words "as the case may be" rep. by the A O 1937.

(Chapter II—*Constitution of Civil Courts*)

the aid of Additional Judges for its speedy disposal, the ¹[Provincial Government] may, ²[having consulted] the High Court * * * *, appoint such Additional Judges as may be requisite

(2) Additional Judges so appointed shall discharge any of the functions of a District Judge which the District Judge may assign to them, and, in the discharge of those functions, they shall exercise the same powers as the District Judge

9. Subject to the superintendence of the High Court, the District Judge shall have administrative control over all the Civil Courts under this Act within the local limits of his jurisdiction Administrative control of Courts

10. (1) In the event of the death, resignation or removal of the District Judge, or of his being incapacitated by illness or otherwise for the performance of his duties, or of his absence from the place at which his Court is held, the Additional Judge, or, if an Additional Judge is not present at that place, the senior Subordinate Judge present thereat, shall, without relinquishing his ordinary duties, assume charge of the office of the District Judge, and shall continue in charge thereof until the office is resumed by the District Judge or assumed by an officer appointed thereto Temporary charge of District Court

(2) While in charge of the office of the District Judge, the Additional Judge or Subordinate Judge, as the case may be, may, subject to any rules which the High Court may make in this behalf, exercise any of the powers of the District Judge

11. (1) In the event of the death, resignation or removal of a Subordinate Judge, or of his being incapacitated by illness or otherwise for the performance of his duties, or of his absence from the place at which his Court is held, the District Judge may transfer all or any of the proceedings pending in the Court of the Subordinate Judge either to his own Court or to any Court under his administrative control competent to dispose of them Transfer of proceedings on vacation of office of Subordinate Judge

(2) Proceedings transferred under sub-section (1) shall be disposed of as if they had been instituted in the Court to which they are so transferred.

(3) Provided that the District Judge may re-transfer to the Court of the Subordinate Judge or his successor any proceedings transferred under sub-section (1) to his own or any other Court

(4) For the purposes of proceedings which are not pending in the Court of the Subordinate Judge on the occurrence of an event referred to in sub-section (1), and with respect to which that Court has exclusive jurisdiction, the District Judge may exercise all or any of the jurisdiction of that Court

¹ Subs by the A O 1937, for "L G"

² Subs by the A O 1937, for "upon the recommendation of"

³ The words "and with the previous sanction of the G. G in C" rep by the Bengal, Agra and Assam Civil Courts (Amendment) Act, 1911 (16 of 1911), s 3

(Chapter II.—Constitution of Civil Courts)

12 [Temporary charge of office of Munsif] Rep by the A O 1937

Power to fix local limits of jurisdiction of Courts.

13. (1) The ¹[~~Provincial~~ Government] may, by notification in the Official Gazette, fix and alter the local limits of the jurisdiction of any Civil Court under this Act

(2) If the same local jurisdiction is assigned to two or more Subordinate Judges or to two or more Munsifs, the District Judge may assign to each of them such civil business cognizable by the Subordinate Judge or Munsif, as the case may be, as, subject to any general or special orders of the High Court, he thinks fit

(3) When civil business arising in any local area is assigned by the District Judge under sub-section (2) to one of two or more Subordinate Judges, or to one of two or more Munsifs, a decree or order passed by the Subordinate Judge or Munsif shall not be invalid by reason only of the case in which it was made having arisen wholly or in part in a place beyond the local area if that place is within the local limits fixed by the ¹[~~Provincial~~ Government] under sub-section (1)

(4) A Judge of a Court of Small Causes appointed to be also a Subordinate Judge or Munsif is a Subordinate Judge or Munsif, as the case may be, within the meaning of this section

(5) The present local limits of the jurisdiction of every Civil Court under this Act shall be deemed to have been fixed under this section

Place of sitting of Courts.

14. (1) The ¹[~~Provincial~~ Government] may, by notification in the Official Gazette, fix and alter the place or places at which any Civil Court under this Act is to be held

(2) All places at which any such Courts are now held shall be deemed to have been fixed under this section

Vacations of Courts

15. (1) Subject to such orders as may be made ² * * ³[* by the ¹[~~Provincial~~ Government] * * *] the High Court shall prepare a list of days to be observed in each year as close holidays in the Civil Courts

(2) The list shall be published in the ⁴[Official Gazette]

(3) A judicial act done by a Civil Court on a day specified in the list shall not be invalid by reason only of its having been done on that day

Seals of Courts

16. Every Civil Court under this Act shall use a seal of such form and dimensions as are prescribed by the ¹[~~Provincial~~ Government]

Continuance of proceedings of Courts ceas-

17. (1) Where any Civil Court under this Act has from any cause ceased to have jurisdiction with respect to any case, any proceedings in relation to that case which, if that Court had not ceased to have juris-

¹ Subs by the A O 1937, for "L G"

² The words "by the G G in C, in the case of the High Court at Calcutta, and" rep by the A O 1937

³ The words "in the case of the High Court at Calcutta, and by the Local Government in other cases," had been ins by the Devolution Act, 1920 (38 of 1920), s 2 and Sch I

⁴ The words "in other cases" rep by the A. O 1937

⁵ Subs. by the A O 1937, for "local official Gazette",

(Chapter II—*Constitution of Civil Courts* Chapter III—*Ordinary Jurisdiction*)

dition, might have been had therein may be had in the Court to which the business of the former Court has been transferred

ing to have jurisdiction

XIV of 1882

(2) Nothing in this section applies to cases for which provision is made in section 623 or section 649 of the Code of Civil Procedure¹ or in any other enactment for the time being in force

CHAPTER III

ORDINARY JURISDICTION

XIV of 1882

18. Save as otherwise provided by any enactment for the time being in force, the jurisdiction of a District Judge or Subordinate Judge extends, subject to the provisions of section 15 of the Code of Civil Procedure² to all original suits for the time being cognizable by Civil Courts

Extent of original jurisdiction of District or Subordinate Judge

³19. (1) Save as aforesaid, and subject to the provisions of sub-section (2), the jurisdiction of a Munsif extends to all like suits of which the value does not exceed one thousand rupees.

Extent of jurisdiction of Munsif

(2) The ⁴[~~Provincial~~ Government] may, on the recommendation of the High Court, direct, by notification in the Official Gazette, with respect to any Munsif named therein, that his jurisdiction shall extend to all like suits of such value not exceeding two thousand rupees as may be specified in the notification

⁵[Provided that the ⁶[~~Provincial~~ Government] may, by notification in the ⁷[Official Gazette], delegate to the High Court its powers under this section]

20. (1) Save as otherwise provided by any enactment for the time being in force, an appeal from a decree or order of a District Judge or Additional Judge shall lie to the High Court.

Appeals from District and Additional Judges

¹ In Bengal and Assam, for the words and figures "in s 623 or s 649 of the Code of Civil Procedure" the words and figures "in ss 36, 37 and 114 of, and rule 1 of Order XLVII in Sch I to, the Code of Civil Procedure, 1908," have been subs by Bengal Act 19 of 1935 and Assam Act 6 of 1935, respectively In Agra, Bihar and Orissa, also, the reference to the old enactment should be construed in the same way see the Code of Civil Procedure, 1908 (Act 5 of 1908), s 158

² In Bengal and Assam, the figures "1908," have been ins at this place by Bengal Act 19 of 1935 and Assam Act 6 of 1935, respectively In Agra, Bihar and Orissa, also, the reference to the old enactment should be construed in the same way see the Code of Civil Procedure, 1908 (Act 5 of 1908), s 158

³ S 19 does not apply to Honorary Munsifs and Benches in the U P see the U P Honorary Munsifs Act, 1896 (U P Act 2 of 1896), s 13 This section has been diversely amended in Bengal, Bihar and Orissa, Agra and Assam by Ben Act 19 of 1935, s 5, B & O Act 4 of 1922, s 2, U P Act 5 of 1925, ss 2 and 3, and Assam Act 6 of 1935, s 5, respectively

⁴ Subs by the A O 1937, for "L G"

⁵ Ins by the Decentralization Act, 1914 (4 of 1914), s 2 and Sch, Pt I

⁶ Subs by the A O 1937, for "local official Gazette"

(Chapter III—Ordinary Jurisdiction Chapter IV.—Special Jurisdiction)

Appeals from
Subordinate
Judges and
Munsifs

(2) An appeal shall not lie to the High Court from a decree or order of an Additional Judge in any case in which, if the decree or order had been made by the District Judge, an appeal would not lie to that Court

21. (1) Save as aforesaid, an appeal from a decree or order of a Subordinate Judge shall lie—

(a) to the District Judge where the value of the original suit in which or in any proceeding arising out of which the decree or order was made did not exceed five thousand rupees, and

(b) to the High Court in any other case

(2) Save as aforesaid, an appeal from a decree or order of a Munsif shall lie to the District Judge

(3) Where the function of receiving any appeals which lie to the District Judge under sub-section (1) or sub-section (2) has been assigned to an Additional Judge, the appeals may be preferred to the Additional Judge

statutory (4) The High Court may, with the previous sanction of the ¹[Provincial Government], direct, by notification in the Official Gazette, that appeals lying to the District Judge under sub-section (2) from all or any of the decrees or orders of any Munsif shall be preferred to the Court of such Subordinate Judge as may be mentioned in the notification, and the appeals shall thereupon be preferred accordingly

CHAPTER IV

SPECIAL JURISDICTION

Power to
transfer to
Subordinate
Judges
appeals from
Munsifs

22. (1) A District Judge may transfer to any Subordinate Judge under his administrative control any appeals pending before him from the decrees or orders of Munsifs

(2) The District Judge may withdraw any appeal so transferred, and either hear and dispose of it himself or transfer it to a Court under his administrative control competent to dispose of it.

(3) Appeals transferred under this section shall be disposed of subject to the rules applicable to like appeals when disposed of by the District Judge.

Exercise by
Subordinate
Judge or
Munsif of
jurisdiction
of District
Court in

²23. (1) The High Court may, by general or special order, authorize any Subordinate Judge or Munsif to take cognizance of, or any District Judge to transfer to a Subordinate Judge or Munsif under his administrative control, any of the proceedings next hereinafter mentioned or any class of those proceedings specified in the order

¹ Subs by the A O 1937, for "L G"

² S 23 does not apply to Honorary Munsifs and Benches in the U P, see the U P Honorary Munsifs Act, 1896 (U P 2 of 1896), s 13

(Chapter IV—Special Jurisdiction)

(2) The proceedings referred to in sub-section (1) are the following, ^{certain proceedings} namely —

(a) proceedings under Bengal Regulation V, 1799 (*to limit the Interference of the Zilla and City Courts of dewanny Adawlut in the Execution of Wills and Administration to the Estates of persons dying intestate*);

1* * * *

2* * * *

X of 1865

(d) proceedings under the Indian Succession Act, 1865,³ and the Probate and Administration Act, 1881¹ which cannot be disposed of by District Delegates, and

V of 1881

(e) references by Collectors under section 322C of the Code of Civil Procedure⁴

XIV of 1882

(3) The District Judge may withdraw any such proceedings taken cognizance of by, or transferred to, a Subordinate Judge or Munsif, and may either himself dispose of them or transfer them to a Court under his administrative control competent to dispose of them

⁵24. (1) Proceedings taken cognizance of by, or transferred to, a Subordinate Judge or Munsif, as the case may be, under the last foregoing section shall be disposed of by him subject to the rules applicable to like proceedings when disposed of by the District Judge ^{Disposal of proceedings referred to in last foregoing section}

Provided that an appeal from an order of the Munsif in any such proceedings shall lie to the District Judge

(2) An appeal from the order of the District Judge on the appeal from the order of a Munsif under this section shall lie to the High Court if a further appeal from the order of the District Judge is allowed by the law for the time being in force

IX of 1887

⁵25. The ^{State} Provincial Government may, by notification in the Official Gazette, confer, within such local limits as it thinks fit, upon any Subordinate Judge or Munsif the jurisdiction of a Judge of a Court of Small Causes under the Provincial Small Cause Courts Act, 1887 for the trial of suits, cognizable by such Courts, up to such value not exceeding ^{Power to invest Subordinate Judges and Munsifs with Small Cause Court jurisdiction}

¹ Cl (b) relating to proceedings under Act 40 of 1858 or Act 9 of 1861 was rep by the Guardians and Wards Act, 1890 (8 of 1890), s 2 and Sch

² Cl (c) relating to applications for certificates under Act 27 of 1860 was rep by the Succession Certificate Act, 1889 (7 of 1889)

³ See now the Indian Succession Act, 1925 (39 of 1925). In Bengal and Assam, this cl has been formally amended by Ben Act 19 of 1935 and Assam Act 6 of 1935, respectively

⁴ See now the Code of Civil Procedure, 1908 (Act 5 of 1908), Sch III. This cl has been omitted in Bengal by Ben Act 19 of 1935 and formally amended in Assam by Assam Act 6 of 1935

⁵ Ss 24 and 25 do not apply to Honorary Munsifs and Benches in the U P; see the U P Honorary Munsifs Act, 1896 (U P 2 of 1896), s 13

⁶ Subs by the A O 1937, for "L G."

(Chapter IV—Special Jurisdiction Chapter V—Misfeasance Chapter VI—Ministerial Officers Chapter VII—Supplemental Provisions)

five hundred¹ rupees in the case of a Subordinate Judge or ²[two hundred and fifty¹ rupees] in the case of a Munsif as it thinks fit, and may withdraw any Jurisdiction so conferred

³[Provided that the ⁴["~~Provincial~~ ^{state} Government] may, by notification in the ⁵[Official Gazette], delegate to the High Court its powers under this section]

CHAPTER V

[MISFEASANCE] Rep by the A O 1937

CHAPTER VI

[MINISTERIAL OFFICERS] Rep by the A O 1937

CHAPTER VII

SUPPLEMENTAL PROVISIONS

Power to confer powers of Civil Courts on officers.

36. (1) The ⁴["~~Provincial~~ ^{state} Government] may invest with the powers of any Civil Court under this Act, by name or in virtue of office,—

(a) any officer in the Chutia Nagpur, ⁶[Sambalpur,] Jalpaiguri or Darjeeling District, or in any part of the territories administered by the Chief Commissioner of Assam except the district of Sylhet, or,

(b) after consultation with the High Court, any officer serving in any other part of the territories to which this Act extends and belonging to a class defined in this behalf by the ⁴["~~Provincial~~ ^{state} Government"] * * * *

(2) Nothing in ⁸[sections 4, 5, 6, 8, 10 or 11] applies to any officer so invested, but all the other provisions of this Act shall, so far as those provisions can be made applicable, apply to him as if he were a Judge of the Court with the powers of which he is invested.

(3) Where, in the territories mentioned in clause (a) of sub-section (1), the same local jurisdiction is assigned to two or more officers invested with the powers of a Munsif, the officer invested with the powers of a

¹ In Bengal and Assam the limits are seven hundred and fifty and three hundred, respectively see Ben Act 19 of 1935 and Assam Act 6 of 1935

² Subs by the Bengal, Agra and Assam Civil Courts (Amendment) Act 1911 (16 of 1911), s 4, for "one hundred rupees".

³ Ins by the Decentralization Act, 1914 (4 of 1914), s 2 and Sch, Pt I

⁴ Subs by the A O 1937, for "L G".

⁵ Subs by the A O 1937, for "local official Gazette"

⁶ Ins by the Sambalpur Civil Courts Act, 1906 (Ben 4 of 1906), s 6

⁷ The words "with the previous sanction of the G G in C" rep by the Devolution Act, 1920 (38 of 1920), s 2 and Sch I, Pt I

⁸ Subs by the A O 1937, for "sections 4 to 8 (both inclusive), or sections 10 to 12 (both inclusive), or sections 27 to 35 (both inclusive)"

(Chapter VII—Supplemental Provisions)

District Judge may, with the previous sanction of the ~~Provincial~~ ^{State} Government], delegate his functions under sub-section (2) of section 13 to an officer invested with the powers of a Subordinate Judge or to one of the officers invested with the powers of a Munsif

(4) Where the place at which the Court of an officer invested with powers under sub-section (1) is to be held has not been fixed under section 14, the Court may be held at any place within the local limits of its jurisdiction

237. (1) Where in any suit or other proceeding it is necessary for a Civil Court to decide any question regarding succession, inheritance, marriage or caste, or any religious usage or institution, the Muhammadan law in cases where the parties are Muhammadans, and the Hindu law in cases where the parties are Hindus, shall form the rule of decision except in so far as such law has, by legislative enactment, been altered or abolished

Certain decisions to be according to Native law.

(2) In cases not provided for by sub-section (1) or by any other law for the time being in force, the Court shall act according to justice, equity and good conscience

38. (1) The presiding officer of a Civil Court shall not try any suit or other proceeding to which he is a party or in which he is personally interested

Judge not to try suits in which they are interested

(2) The presiding officer of an appellate Civil Court under this Act shall not try an appeal against a decree or order passed by himself in another capacity

(3) When any such suit, proceeding or appeal as is referred to in sub-section (1) or sub-section (2) comes before any such officer, the officer shall forthwith transmit the record of the case to the Court to which he is immediately subordinate, with a report of the circumstances attending the reference

XIV of 1882. (4) The superior Court shall thereupon dispose of the case under section 25 of the Code of Civil Procedure¹

(5) Nothing in this section shall be deemed to affect the extraordinary original civil jurisdiction of the High Court

XIV of 1882. 39. For the purposes of the last foregoing section the presiding officer of a Court subject to the administrative control of the District Judge shall be deemed to be immediately subordinate to the Court of the District Judge, and, for the purposes of the Code of Civil Procedure, Subordination of Courts to District Court.

¹ Subs by the A O 1937, for "L.C."

² The provisions of this section, in so far as they are inconsistent with the provisions of the Muslim Personal Law (*Shariat*) Application Act, 1937 (26 of 1937), were rep by s 6 of that Act, but have been revived by s 3 of Act 16 of 1943

³ See now s 24 of the Code of Civil Procedure, 1908 (Act 5 of 1908). In Bengal and Assam, that reference has been formally subs by Ben Act 19 of 1935 and Assam Act 5 of 1935 respectively.

(Chapter VII.—Supplemental Provisions)

King of Oudh's Estate [1887 : Act XIX.

the Court of such an officer shall be deemed to be of a grade inferior to that of the Court of the District Judge

Application
of Act to
Provincial
Courts of
Small Causes

40. (1) This section and sections 15, 32, 37, 38 and 39 apply to Courts of Small Causes constituted under the Provincial Small Cause Courts Act, 1887 IX of 1887

(2) Save as provided by that Act, the other sections of this Act do not apply to those Courts

ACT No XIX OF 1887¹

[23rd September, 1887]

An Act to provide for the Administration of the Estate of His late Majesty the King of Oudh

WHEREAS His late Majesty Wajid Ali Shah, King of Oudh, was during his lifetime exempt from the jurisdiction of the Civil Courts, and it is expedient to make provision for the administration of his estate otherwise than under the authority of those Courts, It is hereby enacted as follows —

Administra-
tion of the
estate of the
late King of
Oudh by the
Provincial
Government

1 (1) The ^{State} ~~Provincial~~ Government] shall have exclusive authority to act in the administration of the property of whatever nature left by His late Majesty the King of Oudh in regard to the settlement and satisfaction of claims against the estate of His late Majesty, and may make distribution of the remaining property or the proceeds thereof in such manner as ^{State} ~~[it]~~ deems fit among the family and dependents of His late Majesty

(2) No act of the ^{State} ~~Provincial~~ Government] in connection with the administration to or distribution of the property left by His late Majesty shall be liable to be questioned in any Court

Indemnity
to Agent to
the Central
Government

2. The Agent to the ^{State} ~~Central~~ Government] with His late Majesty, and all persons acting under his orders, are hereby indemnified and discharged from liability in respect of all acts done by him or them since the twentieth day of September, 1887, in connection with the preservation and administration of the estate of His late Majesty, and no suit or other proceeding shall be instituted in any Court against him or them, or against the Secretary of State for India in Council, in respect of those acts or any of them.

Effect of
Act.

3. This Act shall take effect notwithstanding any testamentary or other disposition which may have been made by His late Majesty, and notwithstanding any proceedings which may have been or may be instituted before

¹ For Proceedings in Council, see Gazette of India, 1887, Pt VI, pp 73 and 78

² Subs by the A O 1937, for "G G in C"

³ Subs by the A O 1937, for "he".

⁴ Subs by the A O 1937, for "Governor General"

any Civil Court for administering his estate or collecting the debts due to it, and any person who under any probate, letters of administration or certificate, or otherwise howsoever, has received or realised any portion of the estate of His late Majesty shall be bound to account therefor to such officer as the ¹[Provincial Government] may appoint in this behalf

~~State~~

THE POLICE ACT, 1888

ACT No III OF 1888.²

[17th February, 1888]

An Act to amend the Law relating to the Regulation of Police

WHEREAS it is expedient to relax those provisions of Acts for the regulation of police which restrict the employment of police-officers to the presidency, province or place of the police-establishment of which they are members, It is hereby enacted as follows —

1. (1) This Act may be called the Police Act, 1888

Title and
extent.

(2) ~~It extends to~~ ³[all the Provinces of India]. ^{4*}

* * * * *

⁵[2. (1) Notwithstanding anything in the Madras District Police Act, 1859, the Indian Police Act, 1861, the Bombay District Police Act, 1890, or any Act relating to the police in any Presidency-town,⁶ the Central Government may, by notification⁷ in the Official Gazette, create a special police district embracing parts of two or more Provinces, and extend to every part of the said district the powers and jurisdiction of members of a police force belonging to ⁸[a-province] specified in the notification

Constitu-
tion of
police
forces for
special
purposes

¹ Subs by the A O 1937, for "G G in C"

² For Statement of Objects and Reasons, see Gazette of India, 1888, Pt V, p 130, for Report of the Select Committee, see *ibid*, 1888, Pt IV, p 8; and for Proceedings in Council, see *ibid*, 1887, Pt VI, p 100, and *ibid*, 1888, pp 37 and 40

It has been declared, by notification under s 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the Districts of Hazáribagh, Lohardaga (now called the Ranchi District, see Calcutta Gazette, 1899, Pt I, p 44), Mánbhum and Palaman, and in Pargana Dhálbhum and the Kolhán in the Singbhum District, see Gazette of India, 1895, Pt I, p 130 and by notification under s 3 (3) (a) of the Sonthal Parganas Settlement Regulation (3 of 1872), to be in force in the Sonthal Parganas, see B & O Gazette, 1930, Pt II, p 880

It has also been extended to Berar by the Berar Laws Act, 1941 (4 of 1941)

³ Subs by the A O 1948, for "the whole of British India"

⁴ The word "and" at the end of sub-section (2), and sub-section (3), were rep by the Repealing and Amending Act, 1914 (10 of 1914), s 3 and Sch II.

⁵ Subs by the A O 1937, for the original section as amended by the Amending Act, 1891 (12 of 1891)

⁶ E.g., the Madras City Police Act, 1888 (Mad III of 1888), the City of Bombay Police Act, 1902 (Bom IV of 1902), and the Calcutta Police Act, 1866 (Ben IV of 1866)

⁷ For such notifications, see Gen R & O, Vol II, pp 622 to 634, and Supplementary Vol VI, pp 170-172

⁸ Subs by the A O 1948 for "any part of British India"

(2) Subject to any orders which the Central Government may make in this behalf, members of the said police force shall have, within every part of any Province of which any part is included in the said district, the powers, duties, privileges and liabilities which, as police officers, they have in their own Province

(3) Any member of the said police force whom the Central Government shall generally or specially empower to act under this subsection may, subject to any orders which the Central Government may make in this behalf, exercise within any Province any part of which is included in the said district any of the powers of the officer in charge of a police-station in that Province, and when so exercising any such powers, shall, subject to any such order as aforesaid, be deemed to be an officer in charge of a police-station discharging the functions of such an officer within the limits of his station

(4) A part of a Province included in the said district shall not by reason of that inclusion cease, for the purposes of any enactment relating to police to be part of that Province]

Employment of police-officers beyond the Province to which they belong

3 Notwithstanding anything in any of the Acts mentioned or referred to in the last foregoing section, but subject to any orders which the ¹[Central Government] may make in this behalf, a member of the ²[police force] of any ³[Province] may discharge the functions of a police-officer in any part of ⁴[any other Province] and shall, while so discharging such functions, be deemed to be a member of the ²[police force] of that part and be vested with the powers, functions and privileges, and be subject to the liabilities, of a police-officer belonging to ⁵[that police force]

Consent of Provincial Government to exercise of powers and jurisdiction

⁶[4 Nothing in this Act shall be deemed to enable the police of one Province to exercise powers and jurisdiction in any area within another Province, not being a railway area, without the consent of the Government of that other Province]

THE INDIAN RESERVE FORCES ACT, 1888

ACT No IV OF 1888⁷

[2nd March, 1888]

An Act to regulate ~~Her Majesty's~~ Indian Reserve Forces

WHEREAS it is expedient to provide for the government, discipline

¹ Subs by the A O 1937, for "G G in C"

² Subs by the A O 1937, for "police-establishment"

³ Subs by the A O 1937, for "presidency province or place"

⁴ Subs by the A O 1948, for "British India beyond the limits of the Province"

⁵ Subs by the A O 1937, for "that establishment"

⁶ Ins by the A O, 1937, of the Govt of India Act, 1935, Sch VII, List I, entry 39

⁷ For Statement of Objects and Reasons, see Gazette of India, 1888, Pt V, p 22, and for Proceedings in Council, see *ibid*, 1888, pp 45 and 55

and regulation of ~~Her Majesty's~~ Indian Reserve Forces, It is hereby enacted as follows —

1. (1) This Act may be called the Indian Reserve Forces Act, 1888, Title and commencement
and

(2) It shall come into force on such day as the ¹[Central Government] may, by notification in the ²[Official Gazette], ³appoint in this behalf

⁴[2. The Indian Reserve Forces shall consist of the Regular Reserve Division of Reserve Forces into Regular and Supplementary Reserves
and the Supplementary Reserve]

3 ⁵* A person belonging to the ⁶[Indian Reserve Forces] shall be liable Locality of service of Reserves
to serve beyond the limits of ⁷[the ~~Provinces~~ *the Regular*] as well as within those limits

⁸* * * * *

4 The ¹[Central Government] may make rules and orders for the government, discipline and regulation of the Indian Reserve Forces Power to make rules for regulation of Reserve Forces

5. Subject to ⁹* * * such rules and orders as may be made under section 4, a person belonging to the Indian Reserve Forces shall, as an officer, or soldier, as the case may be, be subject to military law in the same manner and to the same extent as a person belonging to ~~Her Majesty's Indian Forces~~ *the Regular* Liability of Reserve Forces to military law

- 6 (1) If a person belonging to the Indian Reserve Forces Punishment of certain offences by persons belonging to Reserve Forces
- (a) when required by or in pursuance of any rule or order under this Act to attend at any place, fails without reasonable excuse to attend in accordance with such requirement, or
- (b) fails without reasonable excuse to comply with any such rule or order, or
- (c) fraudulently obtains any pay or other sum contrary to any such rule or order,

¹ Subs by the A O 1937, for "G G in C"

² Subs by the A O 1937, for "Gazette of India"

³ The Act came into force on the 26th May, 1888 see Gazette of India of same date, Pt I, p 239

⁴ Subs by the Indian Reserve Forces (Amendment) Act, 1931 (12 of 1931), s 2, for the original section

⁵ The figure and brackets "(1)" rep by s 3, *ibid*

⁶ Subs by s 3, *ibid*, for "Active Reserve"

⁷ Subs by the A O 1948 for "British India"

⁸ Sub-section (2) rep by s 3, of Act 12 of 1931

⁹ The words "the provision of s 3 with respect to persons belonging to the Garrison Reserve, and to" rep by s 4, *ibid*

he shall be liable—

(i) on conviction by a Court-martial, to such punishment other than death, transportation or imprisonment for a term exceeding one year as such Court is by the ¹[Indian Army Act, 1911,] emp^d VIII of 1911 powered to award, or

(ii) on conviction by ²[a Presidency Magistrate or] a Magistrate of the first class, to imprisonment for a term which may extend, in the case of a first offence under this section, to six months, and, in the case of any subsequent offence thereunder, to one year

(2) Where a person belonging to the Indian Reserve Forces is required by or in pursuance of any rule or order under this Act to attend at any place, a certificate purporting to be signed by an officer appointed by such a rule or order in this behalf, and stating that the person so required to attend failed to do so in accordance with such requirement, shall, without proof of the signature or appointment of such officer, be evidence of the matters stated therein

(3) Any person charged with an offence under this section may be taken into and kept in either military or civil custody, or partly into and in one description of custody and partly into and in the other, or be transferred from one description of custody to the other

7. [Effect of Act on persons already in the Reserve] Rep by the Indian Reserve Forces (Amendment) Act, 1931 (XII of 1931) s 6

³[THE INDIAN TOLLS ACT, 1888]

ACT No VIII OF 1888

[5th September, 1888]

An Act to remove doubts as to the legality of the levy of certain Tolls

WHEREAS doubts have been raised as to the operation of the Acts of the Governor General in Council, No. VIII of 1851 (*an Act for enabling Government to levy Tolls on Public Roads and Bridges*) and No. XV of 1864 (*an Act to amend Act VIII of 1851*), It is hereby enacted as follows —

Enforce-
ment of
Acts VIII of

1. Acts VIII of 1851 and XV of 1864 shall be deemed to be in force throughout the territories now administered by the Lieutenant-Governor

¹ Subs by s 5 of the Indian Reserve Forces (Amendment) Act, 1931 (12 of 1931), for "Indian Articles of War"

² Ins by s 5, *ibid*

³ Short title given by the Indian Short Titles Act, 1897 (14 of 1897)

For Statement of Objects and Reasons, see Gazette of India, 1888, Pt V, p 43, and for Proceedings in Council, see *ibid*, Pt VI, pp 82 and 93

1888 : Act XII.] *City of Bombay Municipal (Supplementary)*

of the Punjab, and from the twenty-first day of August, 1857, and the twenty-fourth day of March, 1864, respectively, to have been in force in the territories for the time being administered as part of the ¹[East Punjab]

2. (1) In ~~any part of~~ ^{a part A state or part B state} ~~the Provinces~~ beyond the limits of the territories administered by the Governor of Fort St George in Council, and the Lieutenant-Governors of Bengal and the North-Western Provinces, to or in which Acts VIII of 1851 and XV of 1864 may be or have been extended, or may be or have been declared to be in force, under the latter of those Acts or by this Act or by or under any other enactment, the ²[Provincial Government] shall be deemed to have and, where the Acts have been in force before the passing of this Act, to have had the same authority as if it had been included among the ⁴[Provincial Governments] specified in section 2 of Act VIII of 1851

5* * * * *

3. All tolls levied, or purporting to have been levied, under Acts VIII of 1851 and XV of 1864, or either of those Acts, before the passing of this Act, shall be deemed to have been lawfully levied

4. Nothing in the foregoing sections shall affect any proceedings commenced in any Civil Court before the first day of July, 1888

5. [Amendment of section 2, Act VIII, 1851] Rep^a by the A O 1937

• [THE CITY OF BOMBAY MUNICIPAL (SUPPLEMENTARY) ACT, 1888]

• Act No XII OF 1888

[12th October, 1888]

An Act to supplement certain provisions of the City of Bombay Municipal Act, 1888 * * *

WHEREAS it is expedient to supplement by legislation in the Council of the Governor General for making Laws and Regulations certain provisions

¹ Subs by the A O 1947, for " Punjab "

² Subs by the A O 1948, for " British India "

³ Subs by the A O 1937, for " L G "

⁴ Subs by the A O 1937, for " Local Governments "

⁵ Sub-section (2) rep by the A O 1937

⁶ Short title given by the Bombay Short Titles Act, 1921 (Born 2 of 1921).

For Statement of Objects and Reasons, see Gazette of India, 1888; Pt V, p 70, and for Proceedings in Council, see *ibid*, Pt VI, pp 99 and 107

⁷ The words and figures " and of the Calcutta Municipal Consolidation Act, 1889 " were rep by the Calcutta Municipal Act, 1899 (Ben 3 of 1899)

of the City of Bombay Municipal Act, 1888 ¹* * * *, It is hereby Bom III of 1888
enacted as follows —

Confirmation
of the City
of Bombay
Municipal
Act, 1888,
so far as
regards
Benches,
Magistrates
and Courts
of Small
Causes

1. The City of Bombay Municipal Act, 1888, ²* * * * shall, so far Bom III of 1888
as regards—

(a) the jurisdiction thereby conferred upon Appellate Benches of
Municipal Authorities and upon Presidency and other
Magistrates and Courts of Small Causes or any Judge of such
a Court, and

(b) the decisions, orders and other proceedings of those Benches,
Magistrates and Courts or of any such Judge,

be as valid as if they had been passed by the Governor General of India in
Council at a meeting for the purpose of making Laws and Regulations

References of
questions by
the Chief
Judge of the
Bombay
Small Cause
Court to the
Bombay
High Court

2. (1) If, before or on the hearing of an appeal under section 217 of
the City of Bombay Municipal Act, 1888, any question of law or usage Bom III of 1888
having the force of law, or the construction of a document, which construc-
tion may affect the merits, arises, on which the Chief Judge of the Court
of Small Causes of Bombay entertains reasonable doubt, the Chief Judge
may, either of his own motion or on the application of either or any of the
parties, draw up a statement of the facts of the case and the point on which
doubt is entertained, and refer the statement, with his own opinion on the
point, for the decision of the High Court of Judicature at Bombay

(2) When a reference is made to the High Court under sub-section (1),
the provisions of sections 618 to 621, both inclusive, of the Code of Civil
Procedure³ shall, so far as they can be made applicable, apply to the Chief XIV of 1882
Judge of the Court of Small Causes and to the High Court, respectively

Appeal to
the Bombay
High Court
from certain
orders of the
Chief Judge of
the Bombay
Small Cause
Court

3. (1) An appeal shall lie to the High Court of Judicature at Bombay
from a decision passed by the Chief Judge of the Court of Small Causes of
Bombay under section 503 or section 504 of the City of Bombay Municipal Bom III of 1888
Act, 1888, when the amount of the claim in respect of which the decision
is passed exceeds two thousand rupees

(2) The provisions of the 'Code of Civil Procedure with respect to XIV of 1882
appeals from original decrees shall, so far as they can be made applicable,
apply to appeals under sub-section (1), and orders passed therein by the
High Court may, on application to the Chief Judge of the Court of Small
Causes, be executed by him as if they were decrees made by himself

¹ The words and figures "and of the Calcutta Municipal Consolidation Act, 1889," rep by the Calcutta Municipal Act, 1899 (Ben 3 of 1899)

² The words and figures "and the Calcutta Municipal Consolidation Act, 1889," rep, *ibid*

³ See now the Code of Civil Procedure, 1908 (Act 5 of 1908), Sch I, Order XLVI, rules 2 to 5

⁴ See now *ibid*, ss 96 to 99 and Sch, I, Order XLI

Bom III of
1888

(3) A decision passed by the Chief Judge of the Court of Small Causes of Bombay under section 503 or section 504 of the City of Bombay Municipal Act, 1888, shall, if an appeal does not lie therefrom under sub-section (1), be final

Bom III of
1888

4. (1) An appeal shall lie to the High Court of Judicature at Bombay from an order passed by a Presidency Magistrate under section 515 of the City of Bombay Municipal Act, 1888

Appeal to
the Bombay
High Court
from orders
of Presidency
Magistrates
in Bombay

(2) The High Court may, from time to time, make rules for regulating the admission of appeals under sub-section (1) and the procedure to be followed in the adjudication thereof

(3) When an appeal has been preferred to the High Court under this section, the Municipal Commissioner for the City of Bombay shall defer action upon the order of the Presidency Magistrate until the appeal has been disposed of

(4) But, when the appeal has been disposed of, he shall forthwith give effect to the order passed therein by the High Court, or if the order of the Presidency Magistrate has not been disturbed by the High Court, then to his order

(5) When disposing of an appeal under this section, the High Court may direct by whom the costs of the appeal are to be paid, and whether in whole or in what part or proportion.

(6) Costs so directed to be paid may, on application to a Presidency Magistrate, be recovered by him, in accordance with the direction of the High Court, as if they were a fine imposed by himself

XV of 1877
XIV of 1882

5. An appeal to the High Court of Judicature at Bombay under either of the two last foregoing sections shall, for the purposes of No 156 of the Second Schedule to the Indian Limitation Act, 1877, be deemed to be an appeal under the Code of Civil Procedure in a case not provided for by No 151 and No 153 of that Schedule

Period of
limitation for
appeals to the
Bombay High
Court under
the two last
foregoing
sections

ACT No XIV OF 1888 ¹

[26th October, 1888]

An Act to make further provision for the Administration of the Estate of His late Majesty the King of Oudh

WHEREAS Act XIX of 1887 (*an Act to provide for the Administration of the Estate of His late Majesty the King of Oudh*) enacts that the Governor

¹ See now the Indian Limitation Act, 1908 (9 of 1908)

² See now the Code of Civil Procedure, 1908 (Act 5 of 1908)

³ For Statement of Objects and Reasons, see Gazette of India, 1888, Pt V, p. 87, and for Proceedings in Council, see *ibid*, Pt VI, pp 108, 123

General in Council shall have exclusive authority to act in the administration of the property of whatever nature left by His late Majesty the King of Oudh in regard to the settlement and satisfaction of claims against the estate of His late Majesty, and may make distribution of the remaining property or the proceeds thereof in such manner as he deems fit among the family and dependents of His late Majesty,

And whereas it is expedient to provide for the mode in which property may be transferred, and suits and other proceedings may be instituted, in the course of the administration of the estate of His late Majesty,

It is hereby enacted as follows —

Transfers of property by and to the Agent to the Central Government, and institution of legal proceedings by him

1. Subject to the control of the ¹[Central Government], the person for the time being holding the office of Agent to the ¹[Central Government] for the Affairs of the late King of Oudh and for the Purposes of Act XIX of 1887 may—

- (a) in his own name and by his name of office dispose of any moveable or immovable property of His late Majesty the King of Oudh in as full and effectual a manner as His Majesty could have disposed of it in his lifetime,
- (b) by his name of office take a conveyance of any moveable or immovable property in which His late Majesty had a beneficial interest, and
- (c) by his name of office institute any suit or other proceeding in any Civil, Criminal or Revenue Court in connection with the possession of any moveable or immovable property belonging to the estate of His late Majesty or the dispossession of any person of any such property, or the recovery of rents, debts or other moneys due to the estate, or otherwise in connection with the administration of the estate.

Consequences ensuing on death, resignation or removal of Agent

2. On the departure from ²[India], or the death, resignation or removal, of an Agent to the ³[Central Government] for the Affairs and Purposes aforesaid, the following consequences shall ensue, namely:—

- (a) any moveable or immovable property vested in him as such Agent shall become vested in his successor in office, and
- (b) a suit or other proceeding instituted by his name of office may be continued by his successor in office in the same manner as if the departure or the death, resignation or removal had not occurred

¹ Subs. by the A O 1937, for "G. G. in C."

² Subs. by the A O 1948, for "British India"

³ Subs. by the A, O, 1937, for "Governor General",

THE METAL TOKENS ACT, 1889

Act No I OF 1889¹

[1st February, 1889.]

An Act for the Protection of Coinage and other purposes

WHEREAS it is expedient to prohibit the making, or the possession for issue or the issue, by private persons, of pieces of metal for use as money,

And whereas it is also expedient to amend section 28 of the Indian Penal Code,

It is hereby enacted as follows —

Title and extent

1. (1) This Act may be called the Metal Tokens Act, 1889

(2) It extends to ^{whole} ~~all~~ the Provinces of India, ^{except part B States} ~~the~~ * * *

2 In this Act "issue" means to put a piece of metal into circulation for the first time for use as money ^{Definition} ~~in the Provinces~~, such piece having been made in contravention of this Act or brought into ~~the Provinces~~ ^{by sea} or by land in contravention of any notification for the time being in force under section 19 of the Sea Customs Act, 1878

3. No piece of copper or bronze or of any other metal or mixed metal, which, whether stamped or unstamped, is intended to be used as money, shall be made except by the authority of the ^{Prohibition of making by private persons of pieces of metal to be used as money} ~~Central Government~~

4. (1) In either of the following cases, namely —

Penalty for unlawful making, issue or possession of such pieces

(a) if any person makes in contravention of the last foregoing section, or issues or attempts to issue, any such piece as is mentioned in that section,

(b) if, after the expiration of three months from the commencement of this Act, any person has in his possession, custody or control any such piece as is mentioned in the last foregoing section, with intent to issue the piece,

the person shall be punished,

(i) if he has not been previously convicted under this section, with imprisonment which may extend to one year, or with fine, or with both, or,

(ii) if he has not been previously convicted under this section, with imprisonment which may extend to three years, or with fine, or with both

¹ For Statement of Objects and Reasons, see Gazette of India, 1888, Pt V, p 19, for Report of the Select Committee, see *ibid*, 1889, Pt IV, p 3, and for Debates in Council, see *ibid*, 1888, Pt VI, pp 40 and 81, and *ibid*, 1889, Pt VI, pp 3 and 9

² Subs by the A O 1948, for "the whole of British India"

³ The word "and" at the end of sub-section (2), and sub-section (3), were rep by the Repealing and Amending Act, 1914 (10 of 1914), s 3 and Sch II

⁴ Subs by the A O 1948, for "British India"

⁵ Subs by the A O 1937, for "G G in C"

(2) If any person is convicted of an offence under sub-section (1), he shall, in addition to any other punishment to which he may be sentenced, forfeit all such pieces as aforesaid, and all instruments and materials for the making of such pieces, which may have been found in his possession, custody or control

(3) If in the trial of any such offence the question arises whether any piece of metal or mixed metal was intended to be used or to be issued for use as money, the burden of proving that the piece was not intended to be so used or issued shall lie on the accused person

Cognizance
of offences
under the
last foregoing
section

5. (1) The offence of making, in contravention of section 3, any such piece as is mentioned in that section shall be a cognizable offence

(2) Notwithstanding anything in the 'Code of Criminal Procedure, X of 1882 1882, no other offence punishable under section 4 shall be cognizable offence, or beyond the limits of a Presidency-town be taken cognizance of by any Magistrate, except a District Magistrate or Sub-Divisional Magistrate, without the previous sanction of the District Magistrate or Sub-Divisional Magistrate

Application
of certain of
the foregoing
provisions of
this Act to
importation
of pieces of
metal for use
as money

6 If at any time the²[Central Government] sees fit, by notification under section 19 of the Sea Customs Act, 1878, to prohibit or restrict the bringing by sea or by land into ³[the ~~Provinces~~ *India territories*] of any such pieces of metal as are mentioned in section 3, ⁴[it] may by the notification direct that any person contravening the prohibition or restriction shall be liable to the punishment to which he would be liable if he were convicted under this Act of making such pieces in ³[the ~~Provinces~~ *said territories*], instead of to the penalty mentioned in section 167 of the Sea Customs Act, 1878, and that the provisions of sub-section (3) of section 4 and sub-section (1) of section 5, or of either sub-section, in relation to the offence of making such pieces shall, notwithstanding anything in the Sea Customs Act, 1878, apply, so far as they can be made applicable, to the offence of contravening the prohibition or restriction notified under section 19 of that Act VIII of 1878

7. [Addition to section 98, Act X of 1882.] *Rep by the Code of Criminal Procedure, 1898 (V of 1898)*

Prohibition of
receipt by
local author-
ities and
railways as
money of
metal which
is not coin

8. (1) No piece of metal which is not coin as defined in the Indian Penal Code shall be received as money by or on behalf of any railway-administration or local authority XLV of 1860

(2) If any person on behalf of a railway-administration, or on behalf of a local authority, or on behalf of the lessee of the collection of any toll or other impost leviable by a railway-administration or local authority, receives as money any piece of metal which is not such coin as aforesaid, he shall be punished with fine which may extend to ten rupees

9. [Amendment of section 28 of the Indian Penal Code] *Rep by the Repealing Act, 1938 (I of 1938), s 2 and Sch*

¹ See now the Code of Criminal Procedure, 1898, (5 of 1898)

² Subs by the A O 1937, for "G G in C"

³ Subs by the A O 1948, for "British India"

⁴ Subs by the A O 1937, for "he"

THE MEASURES OF LENGTH ACT, 1889

ACT No II OF 1889 ¹

[15th February, 1889]

An Act to declare the imperial standard yard for the United Kingdom to be the legal standard measure of length in ~~the Provinces~~

WHEREAS it is expedient to declare the imperial standard yard for the United Kingdom to be the legal standard measure of length in ~~the Provinces~~, It is hereby enacted as follows —

1 (1) This Act may be called the Measures of Length Act, 1889 Title, extent and commencement
(2) It extends to ^{whole} ~~the Provinces~~ of India, ^{except part B states} and

(3) It shall come into force on such day as the ^{Central Government} may appoint in this behalf

2. The imperial standard yard for the United Kingdom shall be the legal standard measure of length in ~~the Provinces~~ ^{Part A states and part C states} and be called the standard yard

3 A copy, approved by the ^{Provincial} ~~Provincial~~ Government, of the imperial standard for determining the length of the imperial standard yard for the United Kingdom shall be kept in such place within the limits of the ^{Province} ~~Province~~ as the ^{Provincial} ~~Provincial~~ Government may prescribe, and shall be the standard for determining the length of the standard yard

⁷[Provided that, until action is taken by the ^{Provincial} ~~Provincial~~ Government under this section, the copy of the imperial standard yard approved by the Central Government before the commencement of Part III of the Government of India Act, 1935, and kept in the place within the limits

26 Geo 5,
c 2

¹ For Statement of Objects and Reasons, see Gazette of India, 1888, Pt V, p 41, for Report of the Select Committee, see *ibid*, 1889, Pt IV, p 6, and for Proceedings in Council, see *ibid*, 1888, Pt VI, pp 66 and 82, and *ibid*, 1889, Pt VI, p 20

This Act has been rep in its application to Bombay Presidency by the Bombay Weights and Measures Act, 1932 (Bom 15 of 1932), in the Punjab in such areas in which the Punjab Weights and Measures Act, 1941 (Pun) Act 12 of 1941) has been brought into force and in Orissa in such areas in which the Orissa Weights and Measures Act, 1943 (Orissa Act 7 of 1943) has been brought into force

² Subs by the A O 1948 for "British India"

³ Subs by the A O 1948 for "the whole of British India"

⁴ The Act was brought into force on the 15th June, 1889, see Gazette of India, 1889, Pt I, p 305

⁵ Subs by the A O 1937, for "G G in C"

⁶ Subs by the A O 1937, for "Town of Calcutta"

⁷ Ins by the A O 1937

⁸ Part III of the G of I Act, 1935, came into force on the 1st April, 1937

of the town of Calcutta prescribed before that date by the Central Government, shall be the standard for determining the length of the standard yard in each Province]

Standard
foot and
inch

4. One-third part of the standard yard shall be called a standard foot, and one-thirty-sixth part of such a yard shall be called a standard inch

Presumption
in favour of
accuracy of
certified
measures

5. Any measure having stamped thereon or affixed thereto a certificate purporting to be made ¹[before the first day of April, 1937, under the authority of any Government in ^{part A states and part C states} ~~the Provinces~~ or on or after that date under the authority of the ~~Provincial~~ ^{State} Government] and stating that the measure is of the length of the standard yard or that a measure marked thereon as a foot or inch is of the length of the standard foot or standard inch, as the case may be, shall, when produced before any Court by any public servant having charge of the measure in pursuance of any direction published in an Official Gazette ³[by order of the ~~Provincial~~ ^{State} Government], or by any person acting under the general or special authority of such a public servant, be deemed to be correct until its inaccuracy is proved

Inspection of
certified
measures by
the public

6. A public servant having in pursuance of such a direction charge of such a measure as is mentioned in the last foregoing section shall allow any person to inspect it free of charge at all reasonable times and to compare therewith or with any measure marked thereon any measure which such person may have in his possession

Certified
measures to
be kept by
authorities
required by
existing enact-
ments to keep
measures of

7. There shall be kept by the Commissioner of Police in the Town of Calcutta under section 55 of the Calcutta Police Act, 1866, * * * * * ^{Ben IV of 1866} by the Commissioner of Police in the City of Madras under section 32 of the Madras City Police Act, 1888, by the Municipal Commissioner in ^{Mad III of 1888} the City of Bombay under section 418 of the City of Bombay Municipal Act, 1888, and by the District Magistrate under section 20 of Regula- ^{Bom III of 1888} tion XII of 1827 of the Bombay Code, such certified measures of the standard yard, standard foot and standard inch as are mentioned in section 5

¹ Subs by the A O 1937, for "under the authority of the G G in C or of a L. G."

² Subs. by the A O 1948, for "British India"

³ Subs by the A O 1937, for "by order of the G. G or the L. G."

⁴ The words "by the Commissioners in Calcutta under section 370 of the Calcutta Municipal Consolidation Act, 1888" rep by the Repealing and Amending Act, 1934 (24 of 1934), s 2 and Sch I

THE INDIAN MERCHANDISE MARKS ACT, 1889

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- 21 Information as to commission of offence
- 22 Punishment of abetment in India of acts done out of India

ACT No IV OF 1889¹

[1st March, 1889]

An Act to amend the Law relating to Fraudulent Marks on merchandise

WHEREAS it is expedient to amend the law relating to fraudulent marks on merchandise, It is hereby enacted as follows —

Title, extent
and com-
mencement

1. (1) This Act may be called the Indian Merchandise Marks Act, 1889
- (2) It extends to ^{whole except the State of J} ~~all~~ the ~~Provinces~~ of India], ^{and * * *}
- (3) It shall come into force on the first day of April, 1889

Definitions

2. In this Act, unless there is something repugnant in the subject or context,—

⁴[(1) “ mark ” has the meaning assigned to that expression in clause (f) of sub-section (1) of section 2 of the Trade Marks Act, 1940,

V of 1940

(1A) “ trade mark ” means a “ registered trade mark ” as defined in clause (g) of sub-section (1) of section 2 of the Trade Marks Act, 1940, or a mark used in relation to goods for the purpose of indicating or so as to indicate a connection in the course of trade between the goods and some person having the right as proprietor to use the mark]

(2) “ trade description ” means any description, statement or other indication, direct or indirect,—

(a) as to the number, quantity, measure, gauge or weight of any goods, or

(b) as to the place or country in which, or the time at which, any goods were made or produced, or

¹ For Statement of Objects and Reasons, see Gazette of India, 1888, Pt V, p 109, for Report of the Select Committee, see *ibid*, 1889, Pt V; p 27, and for Proceedings in Council, see *ibid*, 1888, Pt VI, pp 111 and 136, and *ibid*, 1889, Pt VI, p 38

This Act has been applied to—

(1) the Santal Parganas by the Santal Parganas (Second) Laws Regulation, 1941 (Bihar Regn 3 of 1941),

(2) the Sadiya, Balipara and Lakhimpur Frontier tracts, with modifications by the Assam Excluded Areas (Merchandise Marks) Regulation, 1942 (Assam Regn 2 of 1942),

(3) Berar by the Berar Laws Regulation, 1941 (4 of 1941)

² Subs by the A O 1948, for “ the whole of British India ”

³ The words “ subject to the provision of the last section of this Act ” rep by the Indian Merchandise Marks and Sea Customs Acts Amendment Act, 1891 (9 of 1891), s 1

⁴ Subs by the Indian Merchandise Marks (Amendment) Act, 1941 (2 of 1941), s 2 (with effect from 1-11-1948), for the original definition of “ trade mark ”

⁵ Cf the Merchandise Marks Act, 1887 (50 & 51 Vict c 28), s 3 (1)

(Trade Descriptions)

(c) as to the mode of manufacturing or producing any goods,
or

(d) as to the material of which any goods are composed, or

(e) as to any goods being the subject of an existing patent,
privilege or copyright,

and the use of any ¹[mark] which according to the custom of the trade is commonly taken to be an indication of any of the above matters shall be deemed to be a trade description within the meaning of this Act

(3) "false trade description" means a trade description which is untrue in a material respect as regards the goods to which it is applied, and includes every alteration of a trade description, whether by way of addition, effacement or otherwise, where that alteration makes the description untrue in a material respect, and the fact that a trade description is a trade mark or part of a trade mark shall not prevent such trade description being a false trade description within the meaning of this Act

(4) "goods" means anything which is the subject of trade or manufacture and

(5) "name" includes any abbreviation of a name

is the territory of India excluding the state of
Amendment of the Indian Penal Code *Ko*

3. [Substitution of new sections for sections 478 to 489 of the Indian Penal Code] Rep by the Repealing Act, 1938 (I of 1938), s 2 and Sch

Trade Descriptions

³4. (1) The provisions of this Act respecting the application of a false trade description to goods, or respecting goods to which a false trade description is applied, shall extend to the application to goods of any such ^{Provisions supplemental to the definition of false trade description} ⁴[marks], or arrangement or combination thereof, whether including a trade mark or not, as are or is reasonably calculated to lead persons to believe that the goods are the manufacture or merchandise of some person other than the person whose manufacture or merchandise they really are, and to goods having such ⁴[marks], or arrangement or combination, applied thereto

⁵(2) The provisions of this Act respecting the application of a false trade description to goods, or respecting goods to which a false trade description is applied, shall extend to the application to goods of any

¹ Subs by s 2 of Act 2 of 1941 (with effect from 1-11-1948) for "numeral, word or mark"

² Cf the Merchandise Marks Act, 1887 (50 & 51 Vict, c 28), s 3 (1)

³ Cf the Merchandise Marks Act, 1887 (50 & 51 Vict, c 28), s 3 (2)

⁴ Subs by the Indian Merchandise Marks (Amendment) Act, 1941 (2 of 1941), s 3 (with effect from 1-11-1948), for "numerals, words or marks"

⁵ Cf the Merchandise Marks Act, 1887 (50 & 51 Vict c 28), s 3 (3).

(Trade Descriptions)

false name or initials of a person, and to goods with the false name or initials of a person applied, in like manner as if such name or initials were a trade description, and for the purpose of this enactment the expression false name or initials means as applied to any goods any name or initials—

- (a) not being a trade mark, or part of a trade mark, and
- (b) being identical with, or a colourable imitation of, the name or initials of a person carrying on business in connection with goods of the same description and not having authorized the use of such name or initials

¹[and

- (c) being the name or initials of a fictitious person or of a person not carrying on business in connection with goods of the same description]

(3) A trade description which denotes or implies that there are contained in any goods to which it is applied more yards, feet or inches than there are contained therein standard yards, standard feet or standard inches is a false trade description

Application
of trade
descriptions

²⁵. (1) A person shall be deemed to apply a trade description to goods who—

- (a) applies it to the goods themselves, or
- (b) applies it to any covering, label, reel or other thing in or with which the goods are sold or are exposed or had in possession for sale or any purpose of trade or manufacture, or
- (c) places, encloses or annexes any goods which are sold, or are exposed or had in possession for sale or any purpose of trade or manufacture, in, with or to any covering, label, reel or other thing to which a trade description has been applied, or
- (d) uses a trade description in any manner reasonably calculated to lead to the belief that the goods in connection with which it is used are designated or described by that trade description

(2) A trade description shall be deemed to be applied whether it is woven, impressed or otherwise worked into or annexed or affixed to the goods or any covering, label, reel or other thing

(3) The expression "covering" includes any stopper, cask, bottle, vessel, box, cover, capsule, case, frame or wrapper, and the expression "label" includes any band or ticket

¹ Ins by Act 2 of 1941, s 3 (with effect from 1-11-1948)

² Cf the Merchandise Marks Act, 1887 (50 & 51 Vict c 28), s 5

*(Trade Descriptions Unintentional Contravention of the Law
relating to Marks and Descriptions)*

16. If a person applies a false trade description to goods, he shall, Penalty for applying a false trade description subject to the provisions of this Act, and unless he proves that he acted without intent to defraud, be punished with imprisonment for a term which may extend to three months or with fine which may extend to two hundred rupees, and in the case of a second or subsequent conviction with imprisonment which may extend to one year, or with fine, or with both.

7. If a person sells, or exposes or has in possession for sale or any purpose of trade or manufacture, any goods or things to which a false trade description is applied ²[or which, being required by notification under section 12A to have applied to them an indication of the country or place in which they were made or produced, are without the indication required by such notification] he shall, unless he proves— Penalty for selling goods to which a false trade description is applied

(a) that, having taken all reasonable precautions against committing an offence against this section, he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the trade description ²[or that any offence against this section had been committed in respect of the goods], and

(b) that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things, or

(c) that otherwise he had acted innocently,

be punished with imprisonment for a term which may extend to three months, or with fine which may extend to two hundred rupees, and in case of a second or subsequent conviction with imprisonment which may extend to one year, or with fine, or with both

³[7A. If a person tampers with, alters or effaces a mark which has been applied to any goods to which it is required to be applied by notification made under section 12A, he shall, unless he proves that he acted without intent to defraud, be punished with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees, and, in the case of a second or subsequent conviction, with imprisonment which may extend to two years, or with fine, or with both] Penalty for tampering with, altering or effacing a mark applied in pursuance of section 12A

*Unintentional Contravention of the Law relating to Marks
and Descriptions*

48. Where a person is accused under section 482 of the Indian Penal Code of using a false trade mark or property mark by reason of his Unintentional contravention of the law

¹ Cf the Merchandise Marks Act, 1887 (50 & 51 Vict, c 28), s 2 (1)

² Ins by the Indian Merchandise Marks (Amendment) Act, 1941 (2 of 1941).

³ 4 (with effect from 1-11-1948)

⁴ Ins. by s 5, *ibid*

⁵ Cf the Merchandise Marks Act, 1887 (50 & 51 Vict c. 28), s 6.

(Unintentional Contravention of the Law relating to Marks and
Descriptions Forfeiture of Goods)

relating to
marks and
descriptions

having applied a mark to any goods, property or receptacle in the manner mentioned in section 480 or section 481 of that Code, as the case may be, or under section 6 of this Act of applying to goods any false trade description, or under section 485 of the Indian Penal Code of making any die, plate or other instrument for the purpose of counterfeiting a trade mark or property mark, and proves—

XLV of 1860

- (a) that in the ordinary course of his business he is employed, on behalf of other persons, to apply trade marks or property marks, or trade descriptions, or, as the case may be, to make dies, plates or other instruments for making, or being used in making, trade marks or property marks, and that in the case which is the subject of the charge he was so employed and was not interested in the goods or other thing by way of profit or commission dependent on the sale thereof, and
 - (b) that he took reasonable precautions against committing the offence charged, and
 - (c) that he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the mark or description, and
 - (d) that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons on whose behalf the mark or description was applied,
- he shall be acquitted

Forfeiture of Goods

Forfeiture of
goods

19. (1) When a person is convicted under section 482 of the Indian Penal Code of using a false trade mark, or under section 486 of that Code of selling, or exposing or having in possession for sale or any purpose of trade or manufacture, any goods or things with a counterfeit trade mark applied thereto, or under section 487 or section 488 of that Code of making, or making use of, a false mark, or under section 6 or section 7 of this Act of applying a false trade description to goods or of selling, or exposing or having in possession for sale or any purpose of trade or manufacture, any goods or things to which a false trade description is applied ²[or which, being required by notification under section 12A to have applied to them an indication of the country or place in which they were made or produced, are without the indication required by such

XLV of 1860.

¹ Cf the Merchandise Marks Act, 1887 (50 & 51 Vict., c. 28), s. 2 (3) (iii)

² Ins. by the Indian Merchandise Marks (Amendment) Act, 1941 (2 of 1941), s. 6 (with effect from 1-11-1948)

(Forfeiture of Goods Stamping of Piece-goods, Cotton
yarn and Thread)

notification], or is acquitted on proof of the matter or matters specified in section 486 of the Indian Penal Code or section 7 or section 8 of this Act, the Court convicting or acquitting him may direct the forfeiture to Her Majesty of all goods and things by means of, or in relation to, which the offence has been committed or, but for such proof as aforesaid, would have been committed

(2) When a forfeiture is directed on a conviction, and an appeal lies against the conviction, an appeal shall lie against the forfeiture also

(3) When a forfeiture is directed on an acquittal and the goods or things to which the direction relates are of value exceeding fifty rupees, an appeal against the forfeiture may be preferred, within thirty days from the date of the direction, to the Court to which in appealable cases appeals lie from sentences of the Court which directed the forfeiture

Amendment of the Sea Customs Act, 1878

10 & 11. [Amendment of the Sea Customs Act, 1878] Rep by the Repealing Act, 1938 (I of 1938), s 2 and Sch

¹[Stamping of Piece-goods, Cotton yarn and Thread.

XXV of 1934 12. (1) Piece-goods, such as are ordinarily sold by length or by the piece, which have been manufactured, bleached, dyed, printed or finished in premises which are a factory, as defined in the Factories Act, 1934, shall not be removed for sale from the last of such premises in which they underwent any of the said processes without having conspicuously stamped in English numerals on each piece the length thereof in standard yards, or in standard yards and a fraction of such a yard, according to the real length of the piece, and, except when the goods are sold from the factory for export from ²[the factory], without being conspicuously marked on each piece with the name of the manufacturer, or of the occupier of the premises in which the piece was finally processed or of the wholesale purchaser in India of the piece

(2) Cotton yarn such as is ordinarily sold in bundles, and ³[cotton thread namely sewing, darning, crochet or handicraft thread], which have been manufactured, bleached, dyed, or finished ⁴[in any premises not exempted by rules made under section 20 of this Act], shall not be removed

¹ Subs by the Indian Merchandise Marks (Amendment) Act, 1941 (2 of 1941), s 7, for the original heading and section, (with effect from 1-11-1948)

² Subs by the A O 1948, for "British India"

³ Subs by the Indian Merchandise Marks (Amendment) Supplementary Act, 1945 (5 of 1945), s 2, for "cotton sewing or darning thread"

⁴ Subs, *ibid*, for "in premises which are a factory, as defined in the Factories Act, 1934"

(Stamping of Piece-goods, Cotton yarn and Thread Power to require goods to show indication of origin)

for sale from those premises unless, in accordance with ¹[the said rules] in the case of yarn the bundles are conspicuously marked with an indication of the weight of yarn in each bundle and the count of the yarn contained in the bundle and in the case of thread each unit is conspicuously ²[marked with the length or weight of thread in the unit] and ³[in such other manner as may be required by the said rules] and, except where the goods are sold ⁴[from the premises] for export from ⁵[~~the Provinces~~], unless each bundle or unit is conspicuously marked with the name of the manufacturer or of the wholesale purchaser in India of the goods

⁶[Provided that the rules made under section 20 shall exempt all premises where the work is done by the members of one family with or without the assistance of not more than ten other employees, and all premises controlled by a co-operative society where not more than twenty workers are employed in the premises]

(3) If any person removes or attempts to remove or causes or attempts to cause to be removed for sale from such premises or sells or exposes or has in possession for sale any such piece-goods or any such cotton yarn ⁷[or any such thread] which is not marked as required by sub-section (1) and sub-section (2), every such piece and every such bundle of yarn and all such thread, and everything used for the packing thereof, shall be forfeited to His Majesty and such person shall be punished with fine which may extend to one thousand rupees]

⁸[Power to require goods to show indication of origin

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quire goods
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12A. (1) The Central Government may, by notification in the official Gazette, require that goods of any class specified in the notification which are made or produced beyond the limits of ⁹[~~the Provinces~~] and imported into ¹⁰[~~the Provinces~~], or which are made or produced within the limits of ¹¹[~~the Provinces~~], shall, from such date as may be appointed by the notification not being less than three months from its issue, have applied to them an indication of the country or place in which they were made or produced.

(2) The notification may specify the manner in which such indication shall be applied, that is to say whether to the goods themselves or in any

¹ Subs by the Indian Merchandise Marks (Amendment) Supplementary Act, 1945 (5 of 1945), s 2 for "any rules made under section 20 of this Act"

² Subs *ibid*, for "marked with the weight of thread in the unit"

³ Subs *ibid*, for "the grist number"

⁴ Subs *ibid*, for "from the factory"

⁵ Subs by the A O 1948, for "British India"

⁶ Ins by s 2 of Act 5 of 1945

⁷ Subs *ibid*, for "or any cotton sewing or darning thread"

⁸ Ins by s 8 of Act 2 of 1941 (with effect from 1-11-1948)

(Power to require goods to show indication of origin
Supplemental Provisions)

other manner, and the times or occasions on which the presence of the indication shall be necessary, that is to say whether on importation only, or also at the time of sale, whether by wholesale or retail or both

(3) No notification under this section shall be issued, unless application is made for its issue by persons or associations substantially representing the interests of dealers in or manufacturers, producers, or users of the goods concerned, or unless the Central Government is otherwise convinced that it is necessary in the public interest to issue the notification, nor without such inquiry as the Central Government may consider necessary

X of 1897

(4) The provisions of section 23 of the General Clauses Act, 1897, shall apply to the issue of a notification under this section as they apply to the making of a rule or bye-law the making of which is subject to the condition of previous publication

(5) A notification under this section shall not apply to goods made or produced beyond the limits of ¹[~~the Provinces~~] and imported into ¹[~~the Provinces~~] if in respect of those goods the Chief Customs Officer is satisfied at the time of importation that they are intended for exportation whether after transshipment in or transit through ¹[~~the Provinces~~] or otherwise]

Supplemental Provisions

VIII of 1878

²13. In the case of goods brought into ¹[~~the Provinces~~] by sea, Evidence of evidence of the port of shipment shall, in a prosecution for an offence ^{origin of goods imported by sea} against this Act or section 18 of the Sea Customs Act, 1878, as amended by this Act, be *prima facie* evidence of the place or country in which the goods were made or produced

XLV of 1860

³14. (1) On any such prosecution as is mentioned in the last foregoing section or on any prosecution for an offence against any of the sections of the Indian Penal Code, as amended by this Act, which relate to trade, property and other marks, the Court may order costs to be paid to the defendant by the prosecutor or to the prosecutor by the defendant, having regard to the information given by and the conduct of the defendant and prosecutor respectively ^{Costs of defence or prosecution}

(2) Such costs shall, on application to the Court, be recoverable as if they were a fine

¹ Subs by the A O 1948, for "British India"

² Cf the Merchandise Marks Act, 1887 (50 & 51 Vict c 28), s 10 (2)

³ Cf s 14, *ibid*

(Supplemental Provisions)

Limitation of
prosecution

¹15. No such prosecution as is mentioned in the last foregoing section shall be commenced after the expiration of three years next after the commission of the offence, or one year after the first discovery thereof by the prosecutor, whichever expiration first happens

Authority of
the Central
Govern-
ment to
issue instruc-
tions as to
administra-
tion of this
Act

16 (1) The ²[Central Government] may, by notification ³[in the Official Gazette], issue instructions for observance by Criminal Courts in giving effect to any of the provisions of this Act

(2) Instructions under sub-section (1) may provide, among other matters, for the limits of variation, as regards number, quantity, measure, gauge or weight, which are to be recognized by Criminal Courts as permissible in the case of any goods

Implied
warranty on
sale of
marked
goods

⁵17. On the sale or in the contract for the sale of any goods to which a trade mark or mark or trade description has been applied, the seller shall be deemed to warrant that the mark is a genuine mark and not counterfeit or falsely used, or that the trade description is not a false trade description within the meaning of this Act, unless the contrary is expressed in some writing signed by or on behalf of the seller and delivered at the time of the sale or contract to and accepted by the buyer

Savings

⁶18. (1) Nothing in this Act shall exempt any person from any suit or other proceeding which might, but for anything in this Act, be brought against him

(2) Nothing in this Act shall entitle any person to refuse to make a complete discovery or to answer any question or interrogatory in any suit or other proceeding, but such discovery or answer shall not be admissible in evidence against such person in any such prosecution as is mentioned in section 14

(3) Nothing in this Act shall be construed so as to render liable to any prosecution or punishment any servant of a master resident in ⁷[the Provinces] who in good faith acts in obedience to the instructions of such master, and on demand made by or on behalf of the prosecutor, has given full information as to his master and as to the instructions which he has received from his master

Definition of
piece-goods

⁸[19. For the purpose of section 12 of this Act and clause (f) of section 18 of the Sea Customs Act, 1878, as amended by this Act, the VIII of 1878 ²[Central Government] may, by notification in the ⁹[Official Gazette]

¹ Cf the Merchandise Marks Act, 1887 (50 & 51 Vict, c 28), s 15

² Subs by the A O 1937, for "G G in C"

³ Subs by the A O 1937, for "in the Gazette of India and in local official Gazettes"

⁴ For notification containing such restrictions, see Gen R & O, Vol II, pp 637-639

⁵ Cf the Merchandise Marks Act, 1887 (50 & 51 Vict, c 28), s 17

⁶ Cf s 19, *ibid*

⁷ Subs by the A O 1948, for "British India"

⁸ The original section 19 relating to the date of commencement of the Act as regards unstamped piece-goods, and the words "Transitory Provision" prefixed thereto, were rep by the Indian Merchandise Marks and Sea Customs Acts Amendment Act, 1891 (9 of 1891), s 2; and the present ss 19 to 22 were ins by s 4, *ibid*

⁹ Subs by the A O 1937, for "Gazette of India"

(Supplemental Provisions)

'declare what classes of goods are included in the expression ' piece-goods, such as are ordinarily sold by length or by the piece ']

20 (1) The ²[Central Government] may make 'rules, for the purposes of this Act, to provide, with respect to any goods which purport or are alleged to be of uniform number, quantity, measure, gauge or weight, for the number of samples to be selected and tested and for the selection of the samples

Determina-
tion of
character of
goods by
sampling

³[(1A) The Central Government may make rules providing for the manner in which for the purposes of section 12 cotton yarn and cotton thread shall be marked with the particulars required by that section, and for the exemption of certain premises used for the manufacture, bleaching, dyeing or finishing of cotton yarn or cotton thread from the provisions of that section]

(2) With respect to any goods for the selection and testing of samples of which provision is not made in any rules for the time being in force under sub-section (1), the Court or officer of Customs, as the case may be, having occasion to ascertain the number, quantity, measure, gauge or weight of the goods, shall, by order in writing, determine the number of samples to be selected and tested and the manner in which the samples are to be selected.

(3) The average of the results of the testing in pursuance of rules under sub-section (1) or of an order under sub-section (2) shall be *prima facie* evidence of the number, quantity, measure, gauge or weight, as the case may be, of the goods.

(4) If a person having any claim to, or in relation to, any goods of which samples have been selected and tested in pursuance of rules under sub-section (1) or of an order under sub-section (2), desires that any further samples of the goods be selected and tested, they shall, on his written application and on the payment in advance by him to the Court or officer of Customs, as the case may be, of such sums for defraying the cost of the further selection and testing as the Court or officer may from time to time require, be selected and tested to such extent as may be permitted by rules to be made by the ²[Central Government] in this behalf or as, in the case of goods with respect to which provision is not made in such rules, the Court or officer of Customs may determine in the circumstances to be reasonable, the samples being selected in manner prescribed under sub-section (1), or in sub-section (2), as the case may be

(5) The average of the results of the testing referred to in sub-section (3) and of the further testing under sub-section (4) shall be conclusive proof

¹ For rules made under this section, see Gen R & O, Vol II, pp 639-641

² Subs by the A O 1937, for "G G in C"

³ Ins by the Indian Merchandise Marks (Amendment) Act, 1941 (2 of 1941), s 9 (with effect from 1-11-1948) as amended by the Indian Merchandise Marks (Amendment) Supplementary Act, 1945 (5 of 1945)

(Supplemental Provisions)

Revenue Recovery

[1890 : Act I.

of the number, quantity, measure, gauge or weight, as the case may be,
of the goods

(6) Rules under this section shall be made after previous publication.

Information
as to com-
mission of
offence

21. An officer of the Government whose duty it is to take part in the enforcement of this Act shall not be compelled in any Court to say whence he got any information as to the commission of any offence against this Act

Punishment
of abetment
in India of
acts done out
of India

22. If any person, being within ^{the}~~the~~ ^{Province}~~the Provinces~~, abets the commission, without ^{the}~~the~~ ^{Province}~~the Provinces~~, of any Act which, if committed in ^{the}~~the~~ ^{Province}~~the Provinces~~, would, under this Act, or under any section of that part of Chapter XVIII of the Indian Penal Code which relates to trade, property and other marks, be an offence, he may be tried for such abetment in any place in ^{the}~~the~~ ^{Province}~~the Provinces~~ in which he may be found, and be punished therefor with the punishment to which he would be liable if he had himself committed in that place the act which he abetted]

THE REVENUE RECOVERY ACT, 1890

ACT No I OF 1890²

[14th February, 1890.]

An Act to make better provision for recovering certain public demands.

WHEREAS it is expedient to make better provision for recovering certain public demands, It is hereby enacted as follows —

Title and
extent

1. (r) This Act may be called the Revenue Recovery Act, 1890

3[(2) It extends to ~~all~~ the ^{whole} Provinces of India,] ~~except~~ ^{the} ~~the~~ ^{state}

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Jammu & Kashmir

¹ Subs by the A O 1948, for "British India."

² For Statement of Objects and Reasons, *see* Gazette of India, 1887, Pt V, p 128 for Report of the Select Committee *see ibid*, 1800, Pt V, p 11, and for Proceedings in Council, *see ibid*, 1887, Pt VI, pp 66 and 67, and *ibid* 1890 Pt VI, pp 7 and 12

Thus Act has been declared to be in force in the Sonthál Parganas under s 3 of the Sonthál Parganas Settlement Regulation (3 of 1872), in the Khondmals District by the Khondmals Laws Regulation, 1936 (4 of 1936), s 3 and Sch., and in the Angul District by the Angul Laws Regulation, 1936 (5 of 1936), s 3 and Sch. It has also been extended to Berar by the Berar Laws Act, 1941 (4 of 1941).

³ Subs by the India (Adaptations of Income-tax, Profits Tax and Revenue Recovery Acts) Order, 1947 (G O 31, dated the 10th December 1947) (Gazette of India, 1947, Extraordinary, p 1333), for the original sub-section

⁴ The word "and" at the end of sub-section (2), and sub-section (3) were rep by the Repealing and Amending Act, 1914 (10 of 1914), s 3 and Sch II.

2. In this Act, unless there is something repugnant in the subject or Definitions context,—

(1) " district " includes a presidency-town

(2) " Collector " means the chief officer in charge of the land-revenue administration of a district and

(3) " defaulter " means a person from whom an arrear of land-revenue, or a sum recoverable as an arrear of land-revenue, is due, and includes a person who is responsible as surety for the payment of any such arrear or sum

3. (1) Where an arrear of land-revenue, or a sum recoverable as an arrear of land-revenue, is payable to a Collector by a defaulter being or having property in a district other than that in which the arrear accrued or the sum is payable, the Collector may send to the Collector of that other district a certificate in the form as nearly as may be of the schedule, stating—

(a) the name of the defaulter and such other particulars as may be necessary for his identification, and

(b) the amount payable by him and the account on which it is due

(2) The certificate shall be signed by the Collector making it ¹[or by any officer to whom such Collector may, by order in writing, delegate this duty,] and, save as otherwise provided by this Act, shall be conclusive proof of the matters therein stated

(3) The Collector of the other district shall, on receiving the certificate, proceed to recover the amount stated therein as if it were an arrear of land-revenue which had accrued in his own district.

4. (1) When proceedings are taken against a person under the last foregoing section for the recovery of an amount stated in a certificate, that person may, if he denies his liability to pay the amount or any part thereof and pays the same under protest made in writing at the time of payment and signed by him or his agent, institute a suit for the repayment of the amount or the part thereof so paid

(2) A suit under sub-section (1) must be instituted in a Civil Court having jurisdiction in the local area in which the office of the Collector who made the certificate is situate, and the suit shall be determined in accordance with the law in force at the place where the arrear accrued or the liability for the payment of the sum arose

(3) In the suit the plaintiff may, notwithstanding anything in the last foregoing section, but subject to the law in force at the place aforesaid, give evidence with respect to any matter stated in the certificate.

¹ Ins by the Decentralization Act, 1914 (4 of 1914), s 2 and Sch, Pt I

¹[(4) This section shall apply if under this Act as in force as part of the law of ²[Pakistan or] Burma, or under any other similar Act forming part of the law of ²[Pakistan or] Burma, proceedings are taken against a person in ³[Pakistan or Burma, as the case may be,] for the recovery of an amount stated in a certificate made by a Collector in ⁴~~[a Province of India]~~] *any state to which this Act extends*

Recovery by Collectors of sums recoverable as arrears of revenue by other public officers or by local authorities

5. Where any sum is recoverable as an arrear of land-revenue by any public officer other than a Collector or by any local authority, the Collector of the district in which the office of that officer or authority is situate shall, on the request of the officer or authority, proceed to recover the sum as if it were an arrear of land-revenue which has accrued in his own district, and may send a certificate of the amount to be recovered to the Collector of another district under the foregoing provisions of this Act, as if the sum were payable to himself

Property liable to sale under this Act

6 (1) When the Collector of a district receives a certificate under this Act, he may issue a proclamation prohibiting the transfer or charging of any immoveable property belonging to the defaulter in the district

(2) The Collector may at any time, by order in writing, withdraw the proclamation, and it shall be deemed to be withdrawn when either the amount stated in the certificate has been recovered or the property has been sold for the recovery of that amount

(3) Any private alienation of the property or of any interest of the defaulter therein, whether by sale, gift, mortgage or otherwise, made after the issue of the proclamation and before the withdrawal thereof, shall be void as ⁵[against the ~~Crown~~ *Govt*] and any person who may purchase the property at a sale held for the recovery of the amount stated in the certificate

(4) Subject to the foregoing provisions of this section, when proceedings are taken against any immoveable property under this Act for the recovery of an amount stated in a certificate, the interests of the defaulter alone therein shall be so proceeded against, and no incumbrances created, grants made or contracts entered into by him in ⁶good faith shall be rendered invalid by reason only of proceedings being taken against those interests

(5) A proclamation under this section shall be made by beat of drum or other customary method and by the posting of a copy thereof on a conspicuous place in or near the property to which it relates

¹ Ins by the A O 1937

² Ins by the India (Adaptations of Income-tax, Profits Tax and Revenue Recovery Acts) Order, 1947 (G G O 31, dated the 10th December 1947) (Gazette of India, 1947, Extraordinary, p. 1333)

³ Subs *ibid*, for "Burma"

⁴ Subs *ibid*, for "British India"

⁵ Subs by the A O 1937, for "against the Govt"

⁶ See definition in the General Clauses Act, 1897 (10 of 1897), s (20).

7 Nothing in the foregoing sections shall be construed—

(a) to impair any security provided by, or affect the provisions of, any other enactment for the time being in force for the recovery of land-revenue or of sums recoverable as arrears of land revenue, or

Saving of local laws relating to revenue

(b) to authorise the arrest of any person for the recovery of any tax payable to the corporation, commissioner committee, board, council or person having authority over a municipality under any enactment for the time being in force

8. When this Act has been applied to any local area which is under the administration of ¹[the Central Government] ²* * * but which is not part of ³[the Provinces of India], an arrear of land-revenue accruing in that local area, or a sum recoverable as an arrear of land-revenue and payable to a Collector or other public officer or to a local authority in that local area, may be recovered under this Act in ³[the Provinces of India]

Recovery in the Provinces of certain public demands arising beyond the Provinces

⁴[9. (r) The Central Government may direct⁵ that an arrear of land-revenue accruing in Burma or a sum recoverable in Burma as an arrear of land-revenue and payable to a Collector or other public officer or to a local authority in Burma may be recovered under this Act in ⁶* India and thereupon such arrear or sum shall be so recoverable

Recovery in India of land revenues, etc., accruing in Burma

Provided that the Central Government shall not give any such direction unless it is satisfied that the remedy available under section 4 of this Act in ⁶* India to a person paying under protest in ⁶* India an arrear accruing in ⁶* India is available under Burma law in Burma to a person paying under protest in ⁶* India an arrear accruing in Burma

(2) For recovering by virtue of this section any arrears of tax or penalty due under the enactments relating to income-tax or super-tax in force in Burma, the Collector shall have such additional powers as he has in the case of Indian income-tax and super-tax under the proviso to section 46 (2) of the Indian Income-tax Act, 1922

XI of 1922

⁷[(3) Sub-sections (1) and (2) shall apply in relation to Pakistan as they apply in relation to Burma]

10. Where a Collector receives a certificate under this Act from a Collector of another Province or a Collector in ⁷[Pakistan or] Burma, he shall remit any sum recovered by him by virtue of that certificate to that Collector, after deducting his expenses in connection with the matter]

Duty of Collectors to remit moneys collected in certain cases

¹ Subs by the A O 1937, for "the G G in C"

² The words "or the Crown Representative" rep by the India (Adaptations of Income-tax, Profits Tax and Revenue Recovery Acts) Order, 1947 (G G O 31, dated the 10th December, 1947), (Gazette of India, 1947, Extraordinary, p 1333)

³ Subs *ibid*, for "British India"

⁴ Ss 9 and 10 were ms by the A O 1937

⁵ For a direction under this section see Gazette of India, 1937, Pt I, p 1941

⁶ The word "British" was rep by the India (Adaptations of Income-tax, Profits Tax and Revenue Recovery Acts) Order, 1947 (G G O 31, dated the 10th December, 1947) (Gazette of India, 1947, Extraordinary, p 1333)

⁷ Ins *ibid*

THE SCHEDULE

CERTIFICATE

[See section 3, sub-section (1)]

From

The Collector of

To

The Collector of

Dated the _____ of 18

The sum of Rs _____ is payable on
account of _____ by
_____, son of _____, resident
of _____, who is believed (to be
at _____) (to have property consisting
of _____ at _____) in your
district

Subject to the provisions of the Revenue Recovery Act, 1890, the said sum is recoverable by you as if it were an arrear of land-revenue which had accrued in your own district, and you are hereby desired so to recover it and to remit it to my office at

A B ,

Collector of

THE CHARITABLE ENDOWMENTS ACT, 1890

ACT No VI OF 1890 ¹[7th March, 1890][^]

An Act to provide for the Vesting and Administration of Property held in trust for charitable purposes.

WHEREAS it is expedient to provide for the vesting and administration of property held in trust for charitable purposes, It is hereby enacted as follows —

Title, extent
and com-
mencement

1. (1) This Act may be called the Charitable Endowments Act, 1890
- (2) It extends to ^{the whole} ~~all the Provinces of India~~ *the whole of India*
- (3) It shall come into force on the first day of October, 1890 *and the*

¹ For Statement of Objects and Reasons, see Gazette of India, 1889, Pt V, p 137, for Report of the Select Committee, see *ibid*, 1890, p 65, and for Proceedings in Council, see *ibid*, 1889, Pt VI, pp 117 and 190, and *ibid*, 1890, Pt VI, p 37

This Act has been declared to be in force in the Sonthál Parganas by the Sonthál Parganas Settlement Regulation (3 of 1872), s 3, in the Khondmals District by the Khondmals Laws Regulation, 1936 (4 of 1936), s 3 and Sch, and in the Angul District by the Angul Laws Regulation, 1936 (5 of 1936), s 3 and Sch. It has also been extended to Berar by the Berar Laws Act, 1941 (4 of 1941)

This Act has been amended in its application to Bengal by the Bengal Waks Act, 1934 (Ben 13 of 1934)

² Subs by the A O 1948, for "the whole of British India"

³ The words "inclusive of British Baluchistan" rep by the A O 1948.

2. In this Act, "charitable purpose" includes relief of the poor, Definition education, medical relief and the advancement of any other object of general public utility, but does not include a purpose which relates exclusively to religious teaching or worship.

3. ¹[(x) The Central Government may appoint an officer of the Appointment Government by the name of his office to be Treasurer of Charitable Endow- and incor-
ments for India, and the Government of any ~~Province~~ may appoint an poration of
officer of the Government by the name of his office to be Treasurer of Treasurer of
Charitable Endowments for the ~~Province~~] Charitable
Endowments

(2) Such Treasurer shall, for the purposes of taking, holding and transferring moveable or immoveable property under the authority of this Act, be a corporation sole by the name of the Treasurer of Charitable Endowments for ²[India or, as the case may be, the ~~Province~~]. and, as such Treasurer, shall have perpetual succession and a corporate seal, and may sue and be sued in his corporate name

³[3A. In the subsequent provisions of this Act "the appropriate Government" means, as respects a charitable endowment, the objects of Definition of
which do not extend beyond a single ~~Province~~ and are not objects to "appropriate
which the executive authority of the Central Government extends, the Govern-
ment", etc
Government of the ~~Province~~, and as respects any other charitable endow-
ment the Central Government.]

4. (1) Where any property is held or is to be applied in trust for a Orders vest-
charitable purpose, the ⁴[appropriate Government], if it thinks fit, may, ing property
on application made as hereinafter mentioned, and subject to the other in Treasurer
provisions of this section, order, by ⁵notification in the Official Gazette, that the property be vested in the Treasurer of Charitable Endowments on such terms as to the application of the property or the income thereof as may be agreed on between the ⁴[appropriate Government] and the person or persons making the application, and the property shall thereupon so vest accordingly

(2) When any property has vested under this section in a Treasurer of Charitable Endowments, he is entitled to all documents of title relating thereto.

* * * * *

¹ Subs by the A O 1937, for the original sub-section (1)

² Subs by the A O 1937, for "the territories subject to the L. G "

³ Ins by the A O 1937

⁴ Subs. by the A O. 1937, for "L. G. "

⁵ For notifications issued under this section in conjunction with s 5, see different local R and O

⁶ Sub-section (3) rep by the A O 1937

(4) An order under this section vesting property in a Treasurer of Charitable Endowments shall not require or be deemed to require him to administer the property, or impose or be deemed to impose upon him the duty of a trustee with respect to the administration thereof

Schemes for
administra-
tion of prop-
erty vested
in the Treas-
urer

5. (1) On application made as hereinafter mentioned, and with the concurrence of the person or persons making the application, the ¹[appropriate Government], if it thinks fit, may settle a scheme for the administration of any property which has been or is to be vested in the Treasurer of Charitable Endowments, and may in such scheme appoint, by name or office, a person or persons, not being or including such Treasurer, to administer the property

(2) On application made as hereinafter mentioned, and with the concurrence of the person or persons making the application, the ¹[appropriate Government] may, if it thinks fit, modify any scheme settled under this section or substitute another scheme in its stead

(3) A scheme settled, modified or substituted under this section shall subject to the other provisions of this section, come into operation on a day to be appointed by the ¹[appropriate Government] in this behalf, and shall remain in force so long as the property to which it relates continues to be vested in the Treasurer of Charitable Endowments or until it has been modified or another such scheme has been substituted in its stead.

(4) Such a scheme, when it comes into operation, shall supersede any decree or direction relating to the subject-matter thereof in so far as such decree or direction is in any way repugnant thereto, and its validity shall not be questioned in any Court, nor shall any Court give, in contravention of the provisions of the scheme or in any way contrary or in addition thereto, a decree or direction regarding the administration of the property to which the scheme relates

²[Provided that nothing in this sub-section shall be construed as precluding a Court from inquiring whether the Government by which a scheme was made was the appropriate Government]

(5) In the settlement of such a scheme effect shall be given to the wishes of the author of the trust so far as they can be ascertained, and, in the opinion of the ¹[appropriate Government], effect can reasonably be given to them

¹ Subs by the A O 1937, for "L G"

² Ins by the A O 1937

(6) Where a scheme has been settled under this section for the administration of property not already vested in the Treasurer of Charitable Endowments, it shall not come into operation until the property has become so vested¹

6 (1) The application referred to in the two last foregoing sections must be made,—

Mode of
applying for
vesting orders
and schemes

(a) if the property is already held in trust for a charitable purpose, then by the person acting in the administration of the trust, or, where there are more persons than one so acting, then by those persons or a majority of them, and

(b) if the property is to be applied in trust for such a purpose, then by the person or persons proposing so to apply it

(2) For the purposes of this section the executor or administrator of a deceased trustee of property held in trust for a charitable purpose shall be deemed to be a person acting in the administration of the trust²

7. [Exercise by Governor General in Council of powers of Local Government] Rep by the A. O. 1937

8. (1) Subject to the provisions of this Act, a Treasurer of Charitable Endowments shall not, as such Treasurer, act in the administration of any trust whereof any of the property is for the time being vested in him under this Act

Bare trusteeship of Treasurer.

(2) Such Treasurer shall keep a separate account of each property for the time being so vested in so far as the property consists of securities for money, and shall apply the property or the income thereof in accordance with the provision made in that behalf in the vesting order under section 4 or in the scheme, if any, under section 5, or in both those documents

(3) In the case of any property so vested other than securities for money, such Treasurer shall, subject to any special order which he may receive from the authority by whose order the property became vested in him, permit the persons acting in the administration of the trust to have the possession, management and control of the property, and the application of the income thereof, as if the property had been vested in them

¹ A proviso to s 5, applicable only to Bengal, has been added by the Bengal Wakf Act, 1934 (Ben 13 of 1934), s 79

² A new sub-section (3), applicable only to Bengal, has been added by s 80, ibid

Annual
publication
of list of
properties
vested in
Treasurer

9. A Treasurer of Charitable Endowments shall cause to be published annually in the ¹[Official Gazette], at such time as the ²[appropriate Government] may direct, a list of all properties for the time being vested in him under this Act and an abstract of all accounts kept by him under sub-section (2) of the last foregoing section

Limitation
of functions
and powers
of Treasurer

10. (1) A Treasurer of Charitable Endowments shall always be a sole trustee, and shall not, as such Treasurer, take or hold any property otherwise than under the provisions of this Act, or subject to those provisions, transfer any property vested in him except in obedience to a decree divesting him of the property, or in compliance with a direction in that behalf issuing from the authority by whose order the property became vested in him

(2) Such a direction may require the Treasurer to sell or otherwise dispose of any property vested in him, and, with the sanction of the authority issuing the direction, to invest the proceeds of the sale or other disposal of the property in any such security for money as is ³[specified in the direction], or in the purchase of immoveable property

(3) When a Treasurer of Charitable Endowments is divested, by a direction of ⁴[the appropriate Government] under this section, of any property, it shall vest in the person or persons acting in the administration thereof and be held by him or them on the same trusts as those on which it was held by such Treasurer

Provisions for
continuance
of office of
Treasurer in
certain con-
tingencies

11. If the office held by an officer of the Government who has been appointed to be a Treasurer of Charitable Endowments is abolished or its name is changed, the ⁵[appropriate Government] may appoint the same or another officer of the Government by the name of his office to be such Treasurer, and thereupon the holder of the latter office shall be deemed for the purposes of this Act to be the successor in office of the holder of the former office

Transfer of
property
from one
Treasurer
to another

⁶[12. If by reason of any alteration of areas or by reason of the appointment of a Treasurer of Charitable Endowments for India or for any Province for which such a Treasurer has not previously been appointed or for any other reason it appears to the Central Government that any property vested in a Treasurer of Charitable Endowments should be vested in another such Treasurer, that Government may direct that the property

¹ Subs by the A O 1937, for "local official Gazette"

² Subs by the A O 1937, for "L G"

³ Subs by the A O 1937, for "mentioned in section 4, sub-section (3), clause (a), (b) (c), (d) or (e)"

⁴ Subs by the A. O. 1937, for "the L G. or the G G in C"

⁵ Subs by the A O. 1937, for "L G" which had been subs for "G G. in C" by the Devolution Act, 1920 (38 of 1920), s 2 and Sch I

⁶ Subs by the A O 1937, for the original s. 12

THE COMPTOIR NATIONAL D'ESCOMPTE DE PARIS
ACT, 1890

ACT No VII OF 1890

[14th March, 1890]

An Act to enable the Comptoir National D'Escompte de Paris to sue and be sued in the name of the Chief Manager for the time being of the Indian Agencies of the said Comptoir.

WHEREAS certain persons have formed themselves into a Company at Paris for the transaction of banking business under the name of the Comptoir National D'Escompte de Paris

And whereas the said Company was constituted and established under and by virtue of certain resolutions passed on the 3rd and 11th June, 1889, by General Meetings of Shareholders,

And whereas by the Articles of Association of the said Company it is provided (among other things) that the said Company may continue to exist and carry on business for a term of fifty years from the first day of May, 1889, that the shareholders of the Company shall be responsible only to the amount of their shares respectively, that the rights and liabilities attached to each share shall follow its transmission into whatever hands it may pass, and that the Company may establish Agencies or Branches as well in France as in the French Colonies and abroad, such Agencies to be organized and conducted in the same manner as the Comptoir National D'Escompte itself

And whereas Agencies of the said Company have been recently established in Calcutta and in Bombay,

And whereas on the thirtieth day of April, 1862, a Convention was concluded and signed at Paris between Her Majesty the Queen of Great Britain and Ireland and His Majesty the Emperor of the French, comprising the following articles, that is to say "*First*—The High Contracting Parties declare that they mutually grant to all Companies and other Associations, commercial, industrial or financial, constituted and authorized in conformity with the laws in force in either of the two countries, the power of exercising all their rights, and of appearing before the tribunals, whether for the purpose of bringing an action or for defending the same, throughout the dominions and possessions of the other power, subject to the sole condition of conforming to the laws of such dominions and possessions *Second*—It is agreed that the stipulations of the preceding article shall apply as well to Companies and Associations constituted and authorized previously to the signature of the present Convention as to those which may subsequently be so constituted and authorized. *Third*—The present Convention is concluded without limit as to duration. Either of the High Powers shall, however, be at liberty to terminate it by giving to the other a year's previous notice, The two High Powers, moreover,

reserve to themselves the power to introduce into the Convention, by common consent, any modifications which experience may show to be desirable ”,

And whereas it is desirable that effect should be given to the said Convention so far as the Comptoir National D'Escompte de Paris and its Agencies now or hereafter established in ¹[the Provinces] are concerned,

It is hereby enacted as follows —

1. (1) This Act may be called the Comptoir National D'Escompte de Paris Act, 1890 Title, extent and commencement

(2) It extends to ²[all the Provinces of India], and

(3) It shall come into force at once

2. In this Act, unless there is something repugnant in the subject or context, the expressions “ Chief Manager of the Agencies in ~~[the Provinces]~~ of the said Comptoir ” and “ Chief Manager ” include any person for the time being acting as Chief Manager of the said Agencies in ¹~~[the Provinces]~~ of the Comptoir National D'Escompte de Paris, or being or acting as Manager of such one of the same Agencies as may be situate within the jurisdiction of the Court in which the suit or proceeding mentioned in any of the sections of this Act may be instituted or carried on Definition

3. On and from the commencement of this Act, all suits and other proceedings whatever, for any injury or wrong done to any moveable or immoveable property of the said Comptoir, in whomsoever the same may for the time being be vested, whether in the said Comptoir or in some person or persons in trust for the said Comptoir, or upon or in respect of any present liability to the said Comptoir, or upon any bonds, covenants, contracts or agreements which already have been or hereafter shall be given to or entered into the said Comptoir, or to or with any person whomsoever in trust for the said Comptoir, or wherein the said Comptoir is or shall be interested, and also all instruments and petitions to found any adjudication of insolvency in any Court against any person indebted to the said Comptoir, and hable to have been made insolvent by the laws now or at any time hereafter in force relating to insolvents in ¹~~[the Provinces]~~, and generally all other proceedings whatsoever to be commenced or carried on by or on behalf of the said Comptoir, or wherein the said Comptoir is or shall be interested against any person, whether such person is or shall then be a shareholder or partner of or in the said Comptoir or not, shall and lawfully may be commenced and prosecuted in the name of the person who shall be the Chief Manager of the Agencies in ¹~~[the Provinces]~~ of the said Comptoir at the time such suit or proceeding shall be commenced, as the nominal plaintiff or petitioner for or on behalf of the said Comptoir and all suits and proceedings, as well for subsisting as future accruing claims, debts or demands to be commenced against the said Comptoir to be instituted in name of Chief Manager and not to abate on his death or removal

¹ Subs by the A O 1948, for “ British India ”

² Subs by the A O 1948, for “ the whole of British India ”

Comptoir by any person, whether such person is or shall then be a shareholder or partner of or in the said Comptoir or not, shall be commenced and prosecuted against the Chief Manager as the nominal defendant or respondent for and on behalf of the said Comptoir, and the death, removal, resignation or any other act of such Chief Manager, or his bankruptcy or insolvency, shall not abate or prejudice any suit or other proceeding commenced under this Act, but the same may be continued, prosecuted and carried on or defended in the name of any other the Chief Manager

In criminal proceedings, property of Comptoir to be describable as property of Comptoir or Chief Manager

4. On and from the commencement of this Act, in all criminal proceedings instituted or carried on by or on behalf of the said Comptoir, for fraud or injury upon or against the said Comptoir, or for any offence whatever relating to any money, notes, bills, effects, securities or any moveable or immoveable property of the said Comptoir, or for any other offence against the said Comptoir, it shall be lawful to state such money, notes, bills, effects and securities, and other moveable and immoveable property, in whomsoever the same may be vested, whether in the said Comptoir, or in some person or persons in trust for the said Comptoir, to be the money, notes, bills, effects and securities or property of the said Comptoir, or of the Chief Manager of the Agencies in ^{the Provinces} ~~the Provinces~~ of the said Comptoir, and any offence committed with intent to injure or defraud the said Comptoir shall and lawfully may in such proceedings be said to have been committed with intent to injure or defraud the said Comptoir, or such Chief Manager, and any offender may thereupon be lawfully convicted of any such offence, and in all other proceedings, in which, before the commencement of this Act, it would have been necessary to state the names of the persons composing the said Comptoir, it shall be lawful and sufficient to state the name of such Chief Manager, and the death, resignation or removal of such Chief Manager shall not abate or render defective, or in anywise affect or prejudice, such criminal proceedings

Suit against the Comptoir on contract not to be defeated because plaintiff is a partner

5 No suit which may be commenced in any Court in ^{the Provinces} ~~the Provinces~~ against the said Comptoir, or the Chief Manager of the Agencies in ^{the Provinces} ~~the Provinces~~ of the said Comptoir, upon or arising out of any contract entered into by or on behalf of the said Comptoir, shall be in anywise affected or defeated by reason of the plaintiff therein, or of any other person who may be in anywise interested in such suit, being a shareholder or partner of or in the said Comptoir; but any shareholder or partner of or in the said Comptoir shall have the same right of suit and remedy to be proceeded in and enforced in the same manner against the said Comptoir or such Chief Manager upon any contract, and upon and for any debt, damage or demand whatsoever, which he might have had if he had been a stranger, and not a shareholder or partner of or in the said Comptoir

¹ Subs by the A O 1948, for "British India"

6. No suit commenced by virtue of this Act by or on behalf of the said Comptoir in the name of the Chief Manager, upon or arising out of any contract whatsoever, entered into by or on behalf of the said Comptoir, or for the recovery of any debt, damage or demand whatsoever due or owing to the said Comptoir, or for any other cause or any other account, shall be in anywise affected or defeated by or by reason of the defendant therein, or any person or persons who may be in anywise interested in such suit, being a shareholder or partner of or in the said Comptoir, but the said Comptoir shall and may have the same right of suit and remedy to be proceeded in and enforced in the same manner against any shareholder or partner of or in the said Comptoir, either alone or jointly with any other person, upon any contract, and upon and for any debt, damage or demand whatsoever, which the said Comptoir might have had if such cause of suit had arisen with a stranger and not with a shareholder or partner of or in the said Comptoir.

Suit by Comptoir on contract not to be defeated because defendant is a partner

7. The Chief Manager of the Agencies in ^{*said territories*} ~~the~~ ^{Provinces} of the said Comptoir shall have an office for the transaction of the business of the Comptoir. He shall cause a memorial, in the form and to the effect set forth in Schedule A, or as near thereto as the circumstances of the case will admit of, verified by a declaration in writing made by him before a Judge of the High Court of Judicature within the jurisdiction of which his office is situated, to be enrolled amongst the records of the said High Court. Such memorial shall, prior to being enrolled, be signed by the Chief Manager, and shall be accompanied by, or have annexed thereto, or endorsed thereon, copies of the resolutions, notarial acts, articles and other instruments under which the said Comptoir is established, and copies of the various rules under which the business of the Comptoir is conducted. The memorial shall set forth the situation of the office of the Chief Manager, and of every other office and place in ^{*said territories*} ~~the~~ ^{Provinces}, in or at which the business of the said Comptoir is carried on: and it shall contain a statement of the amount both of the nominal and of the paid-up capital, the number of shares into which the capital is divided, the amount of each share, and the amount of capital (if any) which the said Comptoir shall have set aside for its working capital in ^{*said territories*} ~~the~~ ^{Provinces}, and if the last-mentioned capital is other than money, then a statement of how it stands invested, and in whose name.

Chief Manager to cause a memorial to be enrolled containing certain particulars

8. No memorial shall be enrolled unless the authority of the Chief Manager by whom it is signed, and the copies of the resolutions, notarial acts, articles and other instruments accompanying the memorial, shall be authenticated by the signature and seal of a notary public in France, and countersigned by Her Britannic Majesty's Consul General in Paris for the time being.

Authority of Chief Manager to be authenticated

Memorial of
change in
Chief
Manager
or in facts
set forth
in former
memorial to
be enrolled

9 Whenever any new Chief Manager of the Agencies in ¹[the ~~Pro-
vinces~~] of the said Comptoir shall be appointed, or any change in, or addition to, any of the facts stated in any memorial which may have been enrolled shall take place, a like memorial in the form and to the effect set forth in Schedule B, verified as aforesaid, shall, within twelve months after such appointment, change or addition shall have been made, be enrolled as aforesaid, specifying the name and description of such new Chief Manager, and containing a statement of the change or addition which may have taken place in the facts aforesaid

False decla-
ration an
offence under
the Penal
Code

10 If any declaration made for the purpose of verifying a memorial under this Act shall be false or untrue in any material particular, the person wilfully making such declaration shall be guilty of an offence within the meaning of section 199 of the Indian Penal Code

XLV of 1860

Comptoir not
to sue till
enrolment of
memorial, and
person named
in last memo-
rial to remain
liable till
enrolment of
fresh memo-
rial

11 Until such memorial as first hereinbefore mentioned shall have been duly verified and enrolled, no suit shall be brought by the said Comptoir under the authority of this Act, and, until the memorial by this Act required to be verified and enrolled in the event of the appoint-^{Said territories}ment of a new Chief Manager of the Agencies in ¹[the ~~Provinces~~] of the said Comptoir shall have been duly verified and enrolled, the person whose name shall appear in the last memorial which shall have been duly verified and enrolled shall be liable to all such suits and executions upon judgment, or decree and other proceedings under this Act, and in the same manner, as if he had not ceased to be such Chief Manager, and as if no new Chief Manager had been appointed

Examined
copy to be a
proof of
contents of
memorial

12. An examined copy of every memorial enrolled pursuant to this Act, certified to be a true copy by and under the hand and signature of a Registrar for the time being of the High Court of Judicature in which the same shall have been enrolled, shall be received in evidence as proof of the contents of such memorial, and proof shall not be required that the person by whom the memorial purports to be verified was the Chief Manager at the time of such verification

Judgment or
order against
Chief
Manager
how to be
executed

13 Execution on every judgment, decree and order made or pronounced in any suit or proceeding in any Court in ¹[the ~~Provinces~~] against the Chief Manager shall and may be issued and enforced against any property in ¹[the ~~Provinces~~] ^{Said territories} belonging to the said Comptoir. All the provisions of the Code of Civil Procedure as to the attachment of property before judgment and after judgment shall in all suits against the Chief Manager have full force and effect as regards property in ¹[the ~~Provinces~~] ^{Said territories} belonging to the said Comptoir. So long as the full amount recoverable by any person under any judgment, decree or order shall not have been recovered, no execution issued from any Court in ¹[the ~~Provinces~~] ^{Said territories} nor anything in this Act, shall in any way prejudice

XIV of 1882

¹ Subs by the A O 1948, for "British India".

or injure the right of such person to proceed in France, under the privileges and powers reserved to British subjects by and under the said Convention of the thirtieth day of April, 1862, for the recovery of the amount unrecovered

14. No person having or claiming to have any demand upon or against the said Comptoir shall, when the same has been so determined as to have been pleadable in bar against such person, bring more than one suit in respect of such demand, and the proceedings in any suit which may have been brought against the Chief Manager under the authority of this Act, if so determined, may be pleaded in bar of any suit in any Court in ^{Said Comptoir} ~~the Provinces~~ for the same cause against the same or any other Chief Manager, and in case of any demand which the said Comptoir now has or hereafter may have upon or against any person, whether a shareholder of the said Comptoir or not, and which shall have been determined in any suit commenced or prosecuted by the Chief Manager, the proceedings in such suit may be pleaded in bar of any other suit, in any such Court as aforesaid, for the same demand, which may be commenced or prosecuted by the same or any other Chief Manager

No person to bring more than one suit for the same demand against any Chief Manager, nor the Comptoir against any other person

SCHEDULE A

(See Section 7)

Memorial made the _____ day of ^{India} ~~the Provinces~~ by the Chief Manager of the Agencies in ^{India} ~~the Provinces~~ of the Comptoir National D'Escompte de Paris, pursuant to the Comptoir National D'Escompte de Paris Act, 1890, setting forth the particulars prescribed by section 7 of the said Act

Situation of office of Chief Manager

Situation of other offices and places in ^{India} ~~the Provinces~~

Entire nominal capital of the Comptoir

Paid-up capital

Number of shares

Amount of each share

Amount of capital set aside for operations in ^{India} ~~the Provinces~~

Mode in which the same is invested

Name in which the same is invested

I, A B, Chief Manager of the Agencies in ^{India} ~~the Provinces~~ of the Comptoir National D'Escompte de Paris, do solemnly and sincerely declare, to the best of my knowledge and belief, that the above-written memorial is true in all respects

(Sd) A B

Declared before me, a Judge of the High Court of Judicature at _____

(Schedule B)

Guardians and Wards

[1890 : Act VIII.

SCHEDULE B

(See Section 9)

Memorial made the ~~day~~ ^{day} of _____ by the Chief Manager of the Agencies in ^{India} ~~the Provinces~~ of the Comptoir National D'Escompte de Paris, pursuant to the Comptoir National D'Escompte de Paris Act, 1890, setting forth particulars of change or changes as prescribed by section 9 of the said Act

Name and description of new Chief Manager,

or

New situation of office of Chief Manager,

or

Other change or changes

I, *C D*, Chief Manager of the Agencies in ^{India} ~~the Provinces~~ of the Comptoir National D'Escompte de Paris, do solemnly and sincerely declare, to the best of my knowledge and belief, that the above-written memorial is true in all respects

(Sd) *C D*

Declared before me, a Judge of the High Court of Judicature at _____

THE GUARDIANS AND WARDS ACT, 1890

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¹ Subs by the A O 1948, for "British India".

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(Chapter I—Preliminary)

ACT No VIII OF 1890¹

[21st March, 1890]

An Act to consolidate and amend the law relating to Guardian and Ward

WHEREAS it is expedient to consolidate and amend the law relating to guardian and ward ; It is hereby enacted as follows —

CHAPTER I

PRELIMINARY.

1. (1) This Act may be called the Guardians and Wards Act, 1890
 - (2) It extends to ^{the whole} ~~all the Provinces of India~~, ^{on which, Madras, Orissa, & Kohistan} ~~the whole of India~~
 - (3) It shall come into force on the first day of July, 1890
2. [Repealed] *Rep. by the Repealing Act, 1938 (I of 1938), s. 2 and Sch.*
3. This Act shall be read subject to every enactment heretofore or hereafter passed relating to any Court of Wards, by ^{any State or High Court, or by the} ~~any competent~~ legislature, authority or person in ^{the whole of India} ~~the Provinces~~, and nothing in this Act shall be construed to affect, or in any way derogate from, the jurisdiction or authority of any Court of Wards, or to take away any power possessed by ^{any State or High Court, or by the} ~~any High Court established in the Provinces~~ by Letters Patent].
4. In this Act, unless there is something repugnant in the subject or context,—
- (1) "minor" means a person who, under the provisions of the Indian Majority Act, 1875, is to be deemed not to have attained his majority
 - (2) "guardian" means a person having the care of the person of a minor or of his property, or of both his person and property

¹ For Statement of Objects and Reasons, see Gazette of India, 1886, Pt. V, p. 77 ; for Report of the Select Committee, see *ibid*, 1890, Pt. V, p. 77, and for Debates in Council, see *ibid*, 1886, Supplement, pp. 419 and 666, and *ibid*, 1890, Pt. VI, pp. 33 and 45

This Act has been declared to be in force in the Sonthāl Parganas by the Sonthāl Parganas Settlement Regulation (3 of 1872), s. 3 ; in the Khondmals District by the Khondmals Laws Regulation, 1936 (4 of 1936), s. 3 and Sch.; and in the Angul District by the Angul Laws Regulation, 1936 (5 of 1936), s. 3 and Sch.

It has been extended to be in force in the Scheduled Districts in Ganjam and Vizagapatam, by notification under s. 3 (b) of the Scheduled Districts Act, 1874 (14 of 1874), see Gazette of India, 1898, Pt. I, p. 872.

It has been extended to the portions of the partially excluded areas in the Madras Province, in which the provisions of this Act are not in force by the Madras (Partially Excluded Areas) Guardians and Wards Regulation, 1940 (Mad Reg 6 of 1940) To Berar by the Berar Laws Regulation, 1941 (4 of 1941)

It has also been extended, with modifications, to the district of Koraput by the Koraput Guardians and Wards Regulation, 1943 (Orissa Reg 7 of 1943).

² Subs by the A O 1948, for "the whole of British India".

³ The words "inclusive of British Baluchistan" rep by the A O 1948

⁴ Subs by the A. O. 1937 for "the G. G. in C or by a Governor or Lieutenant-Governor in Council"

⁵ Subs by the A O 1948, for "British India"

⁶ Subs by the A O 1937, for "any High Court established under the Statute 24 and 25 Victoria, Ch 104 (an Act for establishing High Courts of Judicature in India)".

(Chapter I—Preliminary)

(3) "ward" means a minor for whose person or property, or both, there is a guardian.

(4) "District Court" has the meaning assigned to that expression in the ¹Code of Civil Procedure, and includes a High Court in the exercise XIV of 1882 of its ordinary original civil jurisdiction.

²[(5) "the Court" means—

(a) the District Court having jurisdiction to entertain an application under this Act for an order appointing or declaring a person to be a guardian, or

(b) where a guardian has been appointed or declared in pursuance of any such application—

(i) the Court which, or the Court of the Officer who, appointed or declared the guardian or is under this Act deemed to have appointed or declared the guardian, or

(ii) in any matter relating to the person of the ward the District Court having jurisdiction in the place where the ward for the time being ordinarily resides, or

(c) in respect of any proceeding transferred under section 4A, the Court of the officer to whom such proceeding has been transferred]

(6) "Collector" means the chief officer in charge of the revenue-administration of a district, and includes any officer whom the ³[Provincial Government], by notification in the Official Gazette, may, by name or in virtue of his office, appoint⁴ to be a Collector in any local area, or with respect to any class of persons, for all or any of the purposes of this Act:

(7) "European British subject" means an European British subject as defined in the ⁵Code of Criminal Procedure, 1882, and includes any X of 1882 Christian of European descent and

(8) "prescribed" means prescribed by rules made by the High Court under this Act.

Power to confer jurisdiction on subordinate judicial officers and to transfer proceedings to such officers.

⁶[4A. (1) The High Court may, by general or special order, empower any officer exercising original civil jurisdiction subordinate to a District Court, or authorise the Judge of any District Court to empower any such officer subordinate to him, to dispose of any proceedings under this Act transferred to such officer under the provisions of this section.

(2) The Judge of a District Court may, by order in writing, transfer at any stage any proceeding under this Act pending in his Court for

¹ See now the Code of Civil Procedure, 1908 (5 of 1908).

² Subs by s 3 of the Guardians and Wards (Amendment) Act, 1926 (4 of 1926), for the original cl (5)

³ Subs by the A. O 1937, for "L. G."

⁴ For appointments of Collectors under this sub-section in—

(1) the Presidency of Bombay, see Bom R & O

(2) the United Provinces of Agra and Oudh, see U P R. & O

⁵ See now the Code of Criminal Procedure, 1898 (5 of 1898)

⁶ Ins. by the Guardians and Wards (Amendment) Act, 1926 (4 of 1926), s. 2.

(Chapter I.—Preliminary Chapter II.—Appointment and
Declaration of Guardians.)

disposal to any officer subordinate to him empowered under sub-section (1)

(3) The Judge of a District Court may at any stage transfer to his own Court or to any officer subordinate to him empowered under sub-section (1) any proceeding under this Act pending in the Court of any other such officer.

(4) When any proceedings are transferred under this section in any case in which a guardian has been appointed or declared, the Judge of the District Court may, by order in writing, declare that the Court of the Judge or officer to whom they are transferred shall, for all or any of the purposes of this Act, be deemed to be the Court which appointed or declared the guardian.]

CHAPTER II.

APPOINTMENT AND DECLARATION OF GUARDIANS.

5. (1) Where a minor is an European British subject, a guardian or guardians of his person or property, or both, may be appointed by will or other instrument to take effect on the death of the person appointing,—

(a) by the father of the minor, or,

(b) if the father is dead or incapable of acting, by the mother

(2) Where guardians have been appointed under sub-section (1) by both parents, they shall act jointly.

6. In the case of a minor who is not an European British subject, nothing in this Act shall be construed to take away or derogate from any power to appoint a guardian of his person or property, or both, which is valid by the law to which the minor is subject.

7. (1) Where the Court is satisfied that it is for the welfare of a minor that an order should be made—

(a) appointing a guardian of his person or property, or both, or

(b) declaring a person to be such a guardian,

the Court may make an order accordingly.

(2) An order under this section shall imply the removal of any guardian who has not been appointed by will or other instrument or appointed or declared by the Court.

(3) Where a guardian has been appointed by will or other instrument or appointed or declared by the Court, an order under this section appointing or declaring another person to be guardian in his stead shall not be made until the powers of the guardian appointed or declared as aforesaid have ceased under the provisions of this Act.

8. An order shall not be made under the last foregoing section except on the application of—

(a) the person desirous of being, or claiming to be, the guardian of the minor, or

Power of parents to appoint in case of European British subjects

Saving of power to appoint in other cases.

Power of the Court to make order as to guardianship

Persons entitled to apply for order.

(Chapter II — Appointment and Declaration of Guardians)

- (b) any relative or friend of the minor, or
- (c) the Collector of the district or other local area within which the minor ordinarily resides or in which he has property, or
- (d) the Collector having authority with respect to the class to which the minor belongs.

Court having
jurisdiction
to entertain
application

9. (1) If the application is with respect to the guardianship of the person of the minor, it shall be made to the District Court having jurisdiction in the place where the minor ordinarily resides

(2) If the application is with respect to the guardianship of the property of the minor, it may be made either to the District Court having jurisdiction in the place where the minor ordinarily resides or to a District Court having jurisdiction in a place where he has property

(3) If an application with respect to the guardianship of the property of a minor is made to a District Court other than that having jurisdiction in the place where the minor ordinarily resides, the Court may return the application if in its opinion the application would be disposed of more justly or conveniently by any other District Court having jurisdiction

Form of
application

10. (1) If the application is not made by the Collector, it shall be by petition signed and verified in manner prescribed by the 'Code of Civil Procedure for the signing and verification of a plaint, and stating, so far as can be ascertained—

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- (a) the name, sex, religion, date of birth and ordinary residence of the minor,
- (b) where the minor is a female, whether she is married, and, if so, the name and age of her husband,
- (c) the nature, situation and approximate value of the property, if any, of the minor,
- (d) the name and residence of the person having the custody or possession of the person or property of the minor,
- (e) what near relations the minor has, and where they reside,
- (f) whether a guardian of the person or property, or both, of the minor has been appointed by any person entitled or claiming to be entitled by the law to which the minor is subject to make such an appointment,
- (g) whether an application has at any time been made to the Court or to any other Court with respect to the guardianship of the person or property, or both, of the minor, and, if so, when, to what Court and with what result,
- (h) whether the application is for the appointment or declaration of a guardian of the person of the minor, or of his property, or of both,
- (i) where the application is to appoint a guardian, the qualifications of the proposed guardian,

¹ See now the Code of Civil Procedure, 1908 (5 of 1908)

(Chapter II—Appointment and Declaration of Guardians.)

- (j) where the application is to declare a person to be a guardian, the grounds on which that person claims,
 - (k) the causes which have led to the making of the applications, and
 - (l) such other particulars, if any, as may be prescribed or as the nature of the application renders it necessary to state.
- (2) If the application is made by the Collector, it shall be by letter addressed to the Court and forwarded by post or in such other manner as may be found convenient, and shall state as far as possible the particulars mentioned in sub-section (1)
- (3) The application must be accompanied by a declaration of the willingness of the proposed guardian to act and the declaration must be signed by him and attested by at least two witnesses
11. (1) If the Court is satisfied that there is ground for proceeding on the application, it shall fix a day for the hearing thereof, and cause notice of the application and of the date fixed for the hearing—
- Procedure on admission of application
- (a) to be served in the manner directed in the 'Code of Civil Procedure on—
 - (i) the parents of the minor if they are residing in ²[~~the~~ ~~Provinces~~], *any state to which this Act*
 - (ii) the person, if any, named in the petition or letter as having the custody or possession of the person or property of the minor,
 - (iii) the person proposed in the application or letter to be appointed or declared guardian, unless that person is himself the applicant, and
 - (iv) any other person to whom, in the opinion of the Court, special notice of the application should be given, and
 - (b) to be posted on some conspicuous part of the court-house, and of the residence of the minor, and otherwise published in such manner as the Court, subject to any rules made by the High Court under this Act, thinks fit.

(2) The ³[Provincial Government] may, by general or special order, require that, when any part of the property described in a petition under section 10, sub-section (1), is land of which a Court of Wards could assume the superintendence, the Court shall also cause a notice as afore-said to be served on the Collector in whose district the minor ordinarily resides, and on every Collector in whose district any portion of the land is situate, and the Collector may cause the notice to be published in any manner he deems fit.

¹ See now the Code of Civil Procedure, 1908 (5 of 1908)

² Subs by the A. O. 1948, for "British India".

³ Subs by the A. O. 1937, for "L. G."

(Chapter II.—Appointment and Declaration of Guardians.)

(3) No charge shall be made by the Court or the Collector for the service or publication of any notice served or published under sub-section (2).

Power to
make inter-
locutory
order for
production
of minor and
interim pro-
tection of
person and
property

12. (1) The Court may direct that the person, if any, having the custody of the minor shall produce him or cause him to be produced at such place and time and before such person as it appoints, and may make such order for the temporary custody and protection of the person or property of the minor as it thinks proper

(2) If the minor is a female who ought not to be compelled to appear in public, the direction under sub-section (1) for her production shall require her to be produced in accordance with the customs and manners of the country.

(3) Nothing in this section shall authorise—

(a) the Court to place a female minor in the temporary custody of a person claiming to be her guardian on the ground of his being her husband, unless she is already in his custody with the consent of her parents, if any, or

(b) any person to whom the temporary custody and protection of the property of a minor is entrusted to dispossess otherwise than by due course of law any person in possession of any of the property

Hearing of
evidence be-
fore making
of order.

13. On the day fixed for the hearing of the application, or as soon afterwards as may be, the Court shall hear such evidence as may be adduced in support of or in opposition to the application.

Simultaneous
proceedings
in different
Courts.

14. (1) If proceedings for the appointment or declaration of a guardian of a minor are taken in more Courts than one, each of those Courts shall, on being apprised of the proceedings in the other Court or Courts, stay the proceedings before itself.

(2) If the Courts are both or all subordinate to the same High Court, they shall report the case to the High Court, and the High Court shall determine in which of the Courts the proceedings with respect to the appointment or declaration of a guardian of the minor shall be had.

¹[(3) In any other case in which proceedings are stayed under sub-section (1), the Courts shall report the case to, and be guided by such orders as they may receive from, their respective Provincial Governments.]

Appointment
or declaration
of several
guardians.

15. (1) If the law to which the minor is subject admits of his having two or more joint guardians of his person or property, or both, the Court may, if it thinks fit, appoint or declare them.

(2) On the death of a father, being an European British subject, who has, by will or other instrument to take effect on his death, appointed a guardian of his minor child, the Court may appoint the mother to be guardian of the child jointly with the guardian appointed by the father.

¹ Subs by the A O 1937. for the original sub-section (3).

(Chapter II—Appointment and Declaration of Guardians)

(3) On the death of a mother, being an European British subject, who during the incapacity of the father of her minor child has, by will or other instrument to take effect on her death, appointed a guardian of the child, the Court may, if the father becomes capable of acting, appoint him to be sole guardian of the child or guardian of the child jointly with the guardian appointed by the mother, as it thinks fit.

(4) Separate guardians may be appointed or declared of the person and of the property of a minor

(5) If a minor has several properties, the Court may, if it thinks fit, appoint or declare a separate guardian for any one or more of the properties

16. If the Court appoints or declares a guardian for any property situate beyond the local limits of its jurisdiction, the Court having jurisdiction in the place where the property is situate shall, on production of a certified copy of the order appointing or declaring the guardian, accept him as duly appointed or declared and give effect to the order

Appointment or declaration of guardian for property beyond jurisdiction of the Court

17. (1) In appointing or declaring the guardian of a minor, the Court shall, subject to the provisions of this section, be guided by what, consistently with the law to which the minor is subject, appears in the circumstances to be for the welfare of the minor

Matters to be considered by the Court in appointing guardian

(2) In considering what will be for the welfare of the minor, the Court shall have regard to the age, sex and religion of the minor, the character and capacity of the proposed guardian and his nearness of kin to the minor, the wishes, if any, of a deceased parent, and any existing or previous relations of the proposed guardian with the minor or his property

(3) If the minor is old enough to form an intelligent preference, the Court may consider that preference

(4) As between parents who are European British subjects adversely claiming the guardianship of the person, neither parent is entitled to it as of right, but other things being equal, if the minor is a male of tender years or a female, the minor should be given to the mother, and if the minor is a male of an age to require education and preparation for labour and business, then to the father

(5) The Court shall not appoint or declare any person to be a guardian against his will

18. Where a Collector is appointed or declared by the Court in virtue of his office to be guardian of the person or property, or both, of a minor, the order appointing or declaring him shall be deemed to authorise and require the person for the time being holding the office to act as guardian of the minor with respect to his person or property, or both, as the case may be.

Appointment or declaration of Collector in virtue of office.

19. Nothing in this Chapter shall authorise the Court to appoint or declare a guardian of the property of a minor whose property is under

Guardian not to be appointed

(Chapter II.—Appointment and Declaration of Guardians
Chapter III.—Duties, Rights and Liabilities of Guardians)

by the
Court in cer-
tain cases

the superintendence of a Court of Wards, or to appoint or declare a guardian of the person—

- (a) of a minor who is a married female and whose husband is not, in the opinion of the Court, unfit to be guardian of her person, or
- (b) ~~subject to the provisions of this Act with respect to European British subjects,~~ of a minor whose father is living and is not, in the opinion of the Court, unfit to be guardian of the person of the minor, or
- (c) of a minor whose property is under the superintendence of a Court of Wards competent to appoint a guardian of the person of the minor

CHAPTER III

DUTIES, RIGHTS AND LIABILITIES OF GUARDIANS.

General

Fiduciary
relation of
guardian to
ward

20. (1) A guardian stands in a fiduciary relation to his ward, and, save as provided by the will or other instrument, if any, by which he was appointed, or by this Act, he must not make any profit out of his office

(2) The fiduciary relation of a guardian to his ward extends to and affects purchases by the guardian of the property of the ward, and by the ward of the property of the guardian, immediately or soon after the ward has ceased to be a minor, and generally all transactions between them while the influence of the guardian still lasts or is recent

Capacity of
minors to
act as guard-
ians

21. A minor is incompetent to act as guardian of any minor except his own wife or child or, where he is the managing member of an undivided Hindu family, the wife or child of another minor member of that family

Remunera-
tion of
guardian

22. (1) A guardian appointed or declared by the Court shall be entitled to such allowance, if any, as the Court thinks fit for his care and pains in the execution of his duties

(2) When an officer of the Government, as such officer, is so appointed or declared to be guardian, such fees shall be paid to the Government out of the property of the ward as the ¹Provincial Govern-
ment], by general or special order, directs *State*

Control of
Collector as
guardian

23. A Collector appointed or declared by the Court to be guardian of the person or property, or both, of a minor shall, in all matters connected with the guardianship of his ward, be subject to the control of the

¹ Subs by the A O 1937 for "L G"

(Chapter III—Duties, Rights and Liabilities of Guardians.)

¹[Provincial Government] or of such authority as that Government, by
²notification in the Official Gazettee, appoints in this behalf

Guardian of the Person

24. A guardian of the person of a ward is charged with the custody of the ward and must look to his support, health and education, and such other matters as the law to which the ward is subject requires Duties of guardian of the person

25. (1) If a ward leaves or is removed from the custody of a guardian of his person, the Court, if it is of opinion that it will be for the welfare of the ward to return to the custody of his guardian, may make an order for his return, and for the purpose of enforcing the order may cause the ward to be arrested and to be delivered into the custody of the guardian. Title of guardian to custody of ward

(2) For the purpose of arresting the ward, the Court may exercise the power conferred on a Magistrate of the first class by section 100 of the ³Code of Criminal Procedure, 1882.

(3) The residence of a ward against the will of his guardian with a person who is not his guardian does not of itself terminate the guardianship

26. (1) A guardian of the person appointed or declared by the Court unless he is the Collector or is a guardian appointed by will or other instrument, shall not, without the leave of the Court by which he was appointed or declared, remove the ward from the limits of its jurisdiction except for such purposes as may be prescribed Removal of ward from jurisdiction

(2) The leave granted by the Court under sub-section (1) may be special or general, and may be defined by the order granting it

Guardian of Property

27. A guardian of the property of a ward is bound to deal therewith as carefully as a man of ordinary prudence would deal with it if it were his own, and, subject to the provisions of this Chapter, he may do all acts which are reasonable and proper for the realisation, protection or benefit of the property. Duties of guardian of property.

28. Where a guardian has been appointed by will or other instrument, his power to mortgage or charge, or transfer by sale, gift, exchange or otherwise, immoveable property belonging to his ward is subject to any restriction which may be imposed by the instrument, unless he has under this Act been declared guardian and the Court which made the declaration permits him by an order in writing, notwithstanding the restriction, to dispose of any immoveable property specified in the order in a manner permitted by the order Powers of testamentary guardian

29. Where a person other than a Collector, or than a guardian Limitation

¹ Subs by the A O 1937 for "L G"

² For notifications appointing authorities to whose control Collectors appointed under the Act shall be subject, see different local R & O

³ See now the Code of Criminal Procedure, 1898 (5 of 1898)

(Chapter III.—Duties, Rights and Liabilities of Guardians)

of powers of guardian of property appointed or declared by the Court

appointed by will or other instrument, has been appointed or declared by the Court to be guardian of the property of a ward, he shall not, without the previous permission of the Court,—

- (a) mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immoveable property of his ward, or
- (b) lease any part of that property for a term exceeding five years or for any term extending more than one year beyond the date on which the ward will cease to be a minor

Voidability of transfers made in contravention of section 28 or section 29

30. A disposal of immoveable property by a guardian in contravention of either of the two last foregoing sections is voidable at the instance of any other person affected thereby

Practice with respect to permitting transfers under section 29

31. (1) Permission to the guardian to do any of the acts mentioned in section 29 shall not be granted by the Court except in case of necessity or for an evident advantage to the ward

(2) The order granting the permission shall recite the necessity or advantage, as the case may be, describe the property with respect to which the act permitted is to be done, and specify such conditions, if any, as the Court may see fit to attach to the permission, and it shall be recorded, dated and signed by the Judge of the Court with his own hand, or when from any cause he is prevented from recording the order with his own hand, shall be taken down in writing from his dictation and be dated and signed by him

(3) The Court may in its discretion attach to the permission the following among other conditions, namely —

- (a) that a sale shall not be completed without the sanction of the Court,
- (b) that a sale shall be made to the highest bidder by public auction, before the Court or some person specially appointed by the Court for that purpose, at a time and place to be specified by the Court, after such proclamation of the intended sale as the Court, subject to any rules made under this Act by the High Court, directs,
- (c) that a lease shall not be made in consideration of a premium or shall be made for such term of years and subject to such rents and covenants as the Court directs,
- (d) that the whole or any part of the proceeds of the act permitted shall be paid into the Court by the guardian, to be disbursed therefrom or to be invested by the Court on prescribed securities or to be otherwise disposed of as the Court directs

(4) Before granting permission to a guardian to do an act mentioned in section 29, the Court may cause notice of the application for the permission to be given to any relative or friend of the ward who should, in

(Chapter III — Duties, Rights and Liabilities of Guardians.)

its opinion, receive notice thereof, and shall hear and record the statement of any person who appears in opposition to the application

32. Where a guardian of the property of a ward has been appointed or declared by the Court and such guardian is not the Collector, the Court may, from time to time, by order, define, restrict or extend his powers with respect to the property of the ward in such manner and to such extent as it may consider to be for the advantage of the ward and consistent with the law to which the ward is subject

Variation of powers of guardian of property appointed or declared by the Court

33. (1) A guardian appointed or declared by the Court may apply by petition to the Court which appointed or declared him for its opinion, advice or direction on any present question respecting the management or administration of the property of his ward

Right of guardian so appointed or declared to apply to the Court for opinion in management of property of ward

(2) If the Court considers the question to be proper for summary disposal, it shall cause a copy of the petition to be served on, and the hearing thereof may be attended by, such of the persons interested in the application as the Court thinks fit

(3) The guardian stating in 'good faith' the facts in the petition and acting upon the opinion, advice or direction given by the Court shall be deemed, so far as regards his own responsibility, to have performed his duty as guardian in the subject-matter of the application

34. ²Where a guardian of the property of a ward has been appointed or declared by the Court and such guardian is not the Collector, he shall,—

Obligations on guardian of property appointed or declared by the Court

(a) if so required by the Court, give a bond, as nearly as may be in the prescribed form, to the Judge of the Court to enure for the benefit of the Judge for the time being, with or without sureties, as may be prescribed, engaging duly to account for what he may receive in respect of the property of the ward,

(b) if so required by the Court, deliver to the Court, within six months from the date of his appointment or declaration by the Court or within such other time as the Court directs, a statement of the immoveable property belonging to the ward, of the money and other moveable property which he has received on behalf of the ward up to the date of delivering the statement, and of the debts due on that date to or from the ward,

(c) if so required by the Court, exhibit his accounts in the Court at such times and in such form as the Court from time to time directs,

(d) if so required by the Court, pay into the Court at such time

¹ For definition of 'good faith', see s 3 (20) of the General Clauses Act, 1897 (10 of 1897)

² For instances of notifications issued under this section, see Bom R & O

(Chapter III —Duties, Rights and Liabilities of Guardians)

as the Court directs the balance due from him on those accounts, or so much thereof as the Court directs , and

- (e) apply for the maintenance, education and advancement of the ward and of such persons as are dependent on him, and for the celebration of ceremonies to which the ward or any of those persons may be a party, such portion of the income of the property of the ward as the Court from time to time directs, and, if the Court so directs, the whole or any part of that property

Power to
award remuneration for
auditing
accounts

¹[34A When accounts are exhibited by a guardian of the property of a ward in pursuance of a requisition made under clause (c) of section 34 or otherwise, the Court may appoint a person to audit the accounts, and may direct that remuneration for the work be paid out of the income of the property]

Suit against
guardian
where admi-
nistration-
bond was
taken

35. Where a guardian appointed or declared by the Court has given a bond duly to account for what he may receive in respect of the property of his ward, the Court may, on application made by petition and on being satisfied that the engagement of the bond has not been kept, and upon such terms as to security, or providing that any money received be paid into the Court, or otherwise as the Court thinks fit, assign the bond to some proper person, who shall thereupon be entitled to sue on the bond in his own name as if the bond had been originally given to him instead of to the Judge of the Court and shall be entitled to recover thereon as trustee for the ward, in respect of any breach thereof

Suit against
guardian
where ad-
ministration-
bond was
not taken

36. (1) Where a guardian appointed or declared by the Court has not given a bond as aforesaid, any person, with the leave of the Court, may, as next friend, at any time during the continuance of the minority of the ward, and upon such terms as aforesaid, institute a suit against the guardian, or, in case of his death, against his representative, for an account of what the guardian has received in respect of the property of the ward, and may recover in the suit, as trustee for the ward, such amount as may be found to be payable by the guardian or his representative, as the case may be

(2) The provisions of sub-section (1) shall, so far as they relate to a suit against a guardian, be subject to the provisions of section 440 of the Code of Civil Procedure as amended by this Act ²

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General
liability of
guardian
as trustee.

37. Nothing in either of the two last foregoing sections shall be construed to deprive a ward or his representative of any remedy against his guardian, or the representative of the guardian, which, not being expressly provided in either of those sections, any other beneficiary or his representative would have against his trustee or the representative of the trustee

¹ Ins by the Guardians and Wards (Amendment) Act, 1929 (17 of 1929), s. 2

² See now Order XXXII, rules 1 and 4 (2), in Sch. I to the Code of Civil Procedure, 1908 (5 of 1908)

*(Chapter III—Duties, Rights and Liabilities of Guardians)**Termination of Guardianship.*

38. On the death of one of two or more joint guardians, the guardianship continues to the survivor or survivors until a further appointment is made by the Court

Right of survivorship among joint guardians

39. The Court may, on the application of any person interested, or of its own motion, remove a guardian appointed or declared by the Court, or a guardian appointed by will or other instrument, for any of the following causes, namely —

Removal of guardian

- (a) for abuse of his trust,
- (b) for continued failure to perform the duties of his trust;
- (c) for incapacity to perform the duties of his trust,
- (d) for ill-treatment, or neglect to take proper care, of his ward,
- (e) for contumacious disregard of any provision of this Act or of any order of the Court;
- (f) for conviction of an offence implying, in the opinion of the Court, a defect of character which unfits him to be the guardian of his ward,
- (g) for having an interest adverse to the faithful performance of his duties,
- (h) for ceasing to reside within the local limits of the jurisdiction of the Court,
- (i) in the case of a guardian of the property, for bankruptcy or insolvency,
- (j) by reason of the guardianship of the guardian ceasing, or being liable to cease, under the law to which the minor is subject

Provided that a guardian appointed by will or other instrument, whether he has been declared under this Act or not, shall not be removed—

- (a) for the cause mentioned in clause (g) unless the adverse interest accrued after the death of the person who appointed him, or it is shown that that person made and maintained the appointment in ignorance of the existence of the adverse interest, or
- (b) for the cause mentioned in clause (h) unless such guardian has taken up such a residence as, in the opinion of the Court, renders it impracticable for him to discharge the functions of guardian

40. (1) If a guardian appointed or declared by the Court desires to resign his office, he may apply to the Court to be discharged

Discharge of guardian

(2) If the Court finds that there is sufficient reason for the application, it shall discharge him, and if the guardian making the application is the Collector and the [Provincial Government] approves of his applying to be discharged, the Court shall in any case discharge him

(Chapter III—Duties, Rights and Liabilities of Guardians
(Chapter IV—Supplemental Provisions)

Cessation of
authority of
guardian

41. (1) The powers of a guardian of the person cease—
 - (a) by his death, removal or discharge,
 - (b) by the Court of Wards assuming superintendence of the person of the ward,
 - (c) by the ward ceasing to be a minor,
 - (d) in the case of a female ward, by her marriage to a husband who is not unfit to be guardian of her person or, if the guardian was appointed or declared by the Court, by her marriage to a husband who is not, in the opinion of the Court, so unfit, or
 - (e) in the case of a ward whose father was unfit to be guardian of the person of the ward, by the father ceasing to be so or, if the father was deemed by the Court to be so unfit, by his ceasing to be so in the opinion of the Court
- (2) The powers of a guardian of the property cease—
 - (a) by his death, removal or discharge,
 - (b) by the Court of Wards assuming superintendence of the property of the ward, or
 - (c) by the ward ceasing to be a minor
- (3) When for any cause the powers of a guardian cease, the Court may require him or, if he is dead, his representative to deliver as it directs any property in his possession or control belonging to the ward or any accounts in his possession or control relating to any past or present property of the ward
- (4) When he has delivered the property or accounts as required by the Court, the Court may declare him to be discharged from his liabilities save as regards any fraud which may subsequently be discovered
42. When a guardian appointed or declared by the Court is discharged, or, under the law to which the ward is subject, ceases to be entitled to act, or when any such guardian or a guardian appointed by will or other instrument is removed or dies, the Court, of its own motion or on application under Chapter II, may, if the ward is still a minor, appoint or declare another guardian of his person or property, or both, as the case may be

Appointment
of successor
to guardian
dead, dis-
charged or
removed

CHAPTER IV

SUPPLEMENTAL PROVISIONS

Orders for
regulating
conduct or
proceedings

43. (1) The Court may, on the application of any person interested or of its own motion, make an order regulating the conduct or proceedings of any guardian appointed or declared by the Court

(Chapter IV —Supplemental Provisions)

(2) Where there are more guardians than one of a ward, and they are unable to agree upon a question affecting his welfare, any of them may apply to the Court for its direction, and the Court may make such order respecting the matter in difference as it thinks fit of guardians,
and enforce-
ment of those
orders

(3) Except where it appears that the object of making an order under sub-section (1) or sub-section (2) would be defeated by the delay, the Court shall, before making the order, direct notice of the application therefor or of the intention of the Court to make it, as the case may be, to be given, in a case under sub-section (1), to the guardian or, in a case under sub-section (2), to the guardian who has not made the application

(4) In case of disobedience to an order made under sub-section (1) or sub-section (2), the order may be enforced in the same manner as an injunction granted under section 492 or section 493 of the Code of Civil Procedure, in a case under sub-section (1), as if the ward were the plaintiff and the guardian were the defendant or, in a case under sub-section (2), as if the guardian who made the application were the plaintiff and the other guardian were the defendant

(5) Except in a case under sub-section (2), nothing in this section shall apply to a Collector who is, as such, a guardian

44. If, for the purpose or with the effect of preventing the Court from exercising its authority with respect to a ward, a guardian appointed or declared by the Court removes the ward from the limits of the jurisdiction of the Court in contravention of the provisions of section 26, he shall be liable, by order of the Court, to fine not exceeding one thousand rupees, or to imprisonment in the civil jail for a term which may extend to six months Penalty for
removal of
ward from
jurisdiction

45. (1) In the following cases, namely —

(a) if a person having the custody of a minor fails to produce him or cause him to be produced in compliance with a direction under section 12, sub-section (1), or to do his utmost to compel the minor to return to the custody of his guardian in obedience to an order under section 25, sub-section (1), or

(b) if a guardian appointed or declared by the Court fails to deliver to the Court, within the time allowed by or under clause (b) of section 34, a statement required under that clause, or to exhibit accounts in compliance with a requisition under clause (c) of that section, or to pay into the Court the balance due from him on those accounts in compliance with a requisition under clause (d) of that section, or

(c) if a person who has ceased to be a guardian, or the representative of such a person, fails to deliver any property or

Penalty for
contumacy

¹ See now Order XXXIX, rules 1 and 2, in Sch I to the Code of Civil Procedure, 1908 (5 of 1908).

(Chapter IV —Supplemental Provisions)

accounts in compliance with a requisition under section 41, sub-section (3),

the person, guardian or representative, as the case may be, shall be liable, by order of the Court, to fine not exceeding one hundred rupees, and in case of recusancy to further fine not exceeding ten rupees for each day after the first during which the default continues, and not exceeding five hundred rupees in the aggregate, and to detention in the civil jail until he undertakes to produce the minor or cause him to be produced, or to compel his return, or to deliver the statement or to exhibit the accounts, or to pay the balance, or to deliver the property or accounts, as the case may be

(2) If a person who has been released from detention on giving an undertaking under sub-section (1) fails to carry out the undertaking within the time allowed by the Court, the Court may cause him to be arrested and re-committed to the civil jail

Reports by
Collectors
and Sub-
ordinate
Courts

46. (1) The Court may call upon the Collector, or upon any Court subordinate to the Court, for a report on any matter arising in any proceeding under this Act and treat the report as evidence

(2) For the purpose of preparing the report the Collector or the Judge of the Subordinate Court, as the case may be, shall make such inquiry as he deems necessary, and may for the purposes of the inquiry exercise any power of compelling the attendance of a witness to give evidence or produce a document which is conferred on a Court by the ¹Code of Civil Procedure XIV of 1882

Orders ap-
pealable

47. An appeal shall lie to the High Court from an order made by a
** Court,—

- (a) under section 7, appointing or declaring or refusing to appoint or declare a guardian, or
- (b) under section 9, sub-section (3), returning an application, or,
- (c) under section 25, making or refusing to make an order for the return of a ward to the custody of his guardian, or,
- (d) under section 26, refusing leave for the removal of a ward from the limits of the jurisdiction of the Court, or imposing conditions with respect thereto, or,
- (e) under section 28 or section 29, refusing permission to a guardian to do an act referred to in the section, or,
- (f) under section 32, defining, restricting or extending the powers of a guardian, or,
- (g) under section 39, removing a guardian, or
- (h) under section 40, refusing to discharge a guardian, or

¹ See now the Code of Civil Procedure, 1908 (5 of 1908)

² The word "District" rep by s 4 of the Guardians and Wards (Amendment) Act, 1926 (4 of 1926)

(Chapter IV —Supplemental Provisions)

- (i) under section 43 regulating the conduct or proceedings of a guardian or settling a matter in difference between joint guardians, or enforcing the order, or,
- (j) under section 44 or section 45, imposing a penalty

48. Save as provided by the last foregoing section and by ¹section 622 of the Code of Civil Procedure, an order made under this Act shall be final and shall not be liable to be contested by suit or otherwise. Finality of other orders

49. The costs of any proceeding under this Act, including the costs of maintaining a guardian or other person in the civil jail, shall, subject to any rules made by the High Court under this Act, be in the discretion of the Court in which the proceeding is had. Costs

50. (i) In addition to any other power to make rules conferred expressly or impliedly by this Act, the High Court may from time to time make rules consistent with this Act— Power of High Court to make rules

- (a) as to the matters respecting which, and the time at which, reports should be called for from Collectors and Subordinate Courts ,
- (b) as to the allowances to be granted to, and the security to be required from, guardians, and the cases in which such allowances should be granted,
- (c) as to the procedure to be followed with respect to applications of guardians for permission to do acts referred to in sections 28 and 29,
- (d) as to the circumstances in which such requisitions as are mentioned in clauses (a), (b), (c) and (d) of section 34 should be made,
- (e) as to the preservation of statements and accounts delivered and exhibited by guardians ,
- (f) as to the inspection of those statements and accounts by persons interested ,
- ²[(ff) as to the audit of accounts under section 34A, the class of persons who should be appointed to audit accounts, and the scales of remuneration to be granted to them,]
- (g) as to the custody of money, and securities for money, belonging to wards,
- (h) as to the securities on which money belonging to wards may be invested;
- (i) as to the education of wards for whom guardians, not being Collectors, have been appointed or declared by the Court , and,
- (j) generally, for the guidance of the Courts in carrying out the purposes of this Act

¹ See now s 115 of the Code of Civil Procedure, 1908 (5 of 1908)

² Ins by the Guardians and Wards (Amendment) Act, 1929 (17 of 1929), s 3

(Chapter IV.—Supplemental Provisions)

Railways

[1890: Act IX.]

(2) Rules under clauses (a) and (i) of sub-section (1) shall not have effect until they have been approved by the ¹~~Provincial~~^{State} Government], nor shall any rule under this section have effect until it has been published in the Official Gazette

Applicability
of Act to
guardians
already ap-
pointed by
Court.

51. A guardian appointed by or holding a certificate of administration from a Civil Court under any enactment repealed by this Act shall, save as may be prescribed, be subject to the provisions of this Act, and of the rules made under it, as if he had been appointed or declared by the Court under Chapter II.

52. [Amendment of Indian Majority Act] Rep by the Repealing Act, 1938 (I of 1938) s 2 and Sch

53. [Amendment of Chapter XXXI of the Code of Civil Procedure.] Rep by the Code of Civil Procedure, 1908 (V of 1908), s. 156 and Sch V

THE SCHEDULE —[ENACTMENTS REPEALED] Rep by the Repealing Act, 1938 (I of 1938), s 2 and Sch.

THE INDIAN RAILWAYS ACT, 1890

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THE FIRST SCHEDULE—[*Repealed*]

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ACT No IX OF 1890¹

[21st March, 1890]

An Act to consolidate, amend and add to the law relating to Railways in India

WHEREAS it is expedient to consolidate, amend and add to the law relating to railways in India, It is hereby enacted as follows —

CHAPTER I

PRELIMINARY.

1. (1) This Act may be called the Indian Railways Act, 1890

²[(2) It extends to the whole of India]

Title, extent
and com-
mencement

¹ For Statement of Objects and Reasons, see Gazette of India, 1888, Pt V, p 133, for Report of the Select Committee, see *ibid*, 1890, Pt V, p 23, and for debates in Council, see *ibid*, 1888, Pt VI, pp 124 and 137, and *ibid*, 1890, Pt VI, pp 15 and 48

This Act has been declared to be in force by notification under s 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874) in the following Scheduled Districts, namely —

Tarai Parganas, Province of Agra, see Gazette of India, 1890, Pt I, p 506, the Districts of Hazaribagh, Lohardaga (now the Districts of Ranchi and Palamau) and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singbhum, see *ibid*, p 859

It has been declared to be in force in the Sonthal Parganas by the Sonthal Parganas Settlement Regulation (3 of 1872), s 3 and in the Angul District by the Angul Laws Regulation, 1936 (5 of 1936), s 3 and Sch

It has also been partially extended to Berar by the Berar Laws Act, 1941 (4 of 1941)

The Railway Board Act, 1905 (4 of 1905), is to be read with, and taken as part of this Act, see s 1 (2) of that Act

² Subs by the Indian Railways (Amendment) Act, 1948, (21 of 1948), s 2, for the former sub-section

(Chapter I —Preliminary)

(3) It shall come into force on the first day of May, 1890

2. [Repeal] Rep by the Repealing Act, 1938 (I of 1938), s 2 and Sch

3. In this Act, unless there is something repugnant in the subject or Definitions context,—

6 (1) "tramway" means a tramway constructed under the Indian Tramways Act, 1886, or any special Act relating to tramways ,

(2) "ferry" includes a bridge of boats, pontoons or rafts, a swing-bridge, a flying bridge and a temporary bridge, and the approaches to, and landing places of, a ferry

(3) "inland water" means any canal, river, lake or navigable water
1* * *

(4) "railway" means a railway, or any portion of a railway, for the public carriage of passengers, animals or goods, and includes—

(a) all land within the fences or other boundary-marks indicating the limits of the land appurtenant to a railway;

(b) all lines of rails, sidings, or branches worked over for the purposes of, or in connection with, a railway,

(c) all stations, offices, warehouses, wharves, workshops, manufacturing, fixed plant and machinery and other works constructed for the purposes of, or in connection with, a railway, and

(d) all ferries, ships, boats and rafts which are used on inland waters for the purposes of the traffic of a railway and belong to or are hired or worked by the authority administering the railway

²(5) "railway company" includes any persons, whether incorporated or not, who are owners or lessees of a railway or parties to an agreement or working a railway

(6) "railway administration" or "administration," in the case of a railway administered by the Government or a ³* State, means the manager of the railway and includes the Government or the ³* State, and, in the case of a railway administered by a railway company, means the railway company

(7) "railway servant" means any person employed by a railway administration in connection with the service of a railway.

(8) "Inspector" means an Inspector of Railways appointed under this Act

¹ The words "in British India" were rep by the Indian Railways Act (Adaptation) Order, 1948 (G G O 36, dated 11th February, 1948).

² Cf the Regulation of Railways Act, 1871 (34 and 35 Vict., c 78), s 2

³ The word "Native" was rep by the Indian Railways Act (Adaptation) Order, 1948 (G G O 36, dated 11th February, 1948)

(Chapter I—Preliminary)

¹(9) "goods" includes inanimate things of every kind

²(10) "rolling-stock" includes locomotive engines, tenders, carriages, wagons, trucks and trollies of all kinds

³(11) "traffic" includes rolling-stock of every description, as well as passengers, animals and goods

(12) "through traffic" means traffic which is carried over the railways of two or more railway administrations

²(13) "rate" includes any fare, charge or other payment for the carriage of any passenger, animal or goods

⁴(14) "terminals" includes charges in respect of stations, sidings, wharves, depôts, warehouses cranes and other similar matters, and of any services rendered thereat

(15) "pass" means an authority given by a railway administration, or by an officer appointed by a railway administration in this behalf, and authorising the person to whom it is given to travel as a passenger on a railway gratuitously

(16) "ticket" includes a single ticket, a return ticket and a season ticket

(17) "maund" means a weight of three thousand two hundred tolas, each tola being a weight of one hundred and eighty grains Troy and

⁵(18) "Collector" means the chief officer in charge of the land-revenue administration of a district, and includes any officer specially appointed by the ^{Provincial} Government to discharge the functions of a Collector under this Act,

⁷[(19) "Federal Railway", "Indian State railway", and "minor railway" have the meanings respectively assigned to them in the

⁶Government of India Act, 1935, except that they do not in any provision ^{26 Geo 5.} of this Act include any tramway, unless that provision has been ^{c 2} extended under section 126 of this Act to that tramway

* * * * *

¹⁰[(22) 'the general controlling authority' means, in relation to a minor railway wholly situate in a Province, the Provincial Government, ¹¹[in relation to a minor railway wholly situate in an Acceding State, the Government of that State] and in relation to any other railway, the Central Government]

¹ Cf the Railways Clauses Act, 1845 (8 & 9 Vict, c 20), s 3

² Cf the Railway Rolling-Stock Protection Act, 1872 (35 & 36 Vict, c 50), s 2

³ Cf the Railway and Canal Traffic Act, 1854 (17 & 18 Vict, c 31), s 1

⁴ Cf the Railway and Canal Traffic Act, 1888 (51 & 52 Vict, c 25), s 55

⁵ See also the definition in s 3 (10) of the General Clauses Act, 1897 (10 of 1897)

⁶ Subs by the A O 1937, for "L G"

⁷ Cls (19) to (22) were ins by the A O 1937

⁸ See s 311 (2) of that Act

⁹ Cls (20) and (21, were rep by the Indian Railways Act (Adaptation) Order, 1948 (G G O 36, dated 11th February, 1948)

¹⁰ Subs by the Indian Railways Act (Adaptation) Order, 1948 (G G O 36, dated 11th February, 1948), for the original clause

¹¹ Ins by the Indian Railways (Amendment) Act, 1948 (21 of 1948), s 3

(Chapter II—Inspection of Railways)

CHAPTER II

INSPECTION OF RAILWAYS

¹⁴. (1) The ²[Central Government] may appoint persons, by name Appointment and duties of Inspectors or by virtue of their office, to be Inspectors of Railways

(2) The duties of an Inspector of Railways shall be—

- (a) to inspect railways with a view to determine whether they are fit to be opened for the public carriage of passengers, and to report thereon to the ²[Central Government] as required by this Act,
- (b) to make such periodical or other inspections of any railway or of any rolling-stock used thereon as the ²[Central Government] may direct,
- (c) to make inquiry under this Act into the cause of any accident on a railway,
- (d) to perform such other duties as are imposed on him by this Act, or any other enactment for the time being in force relating to railways

¹⁵. An Inspector shall, for the purpose of any of the duties which he is required or authorised to perform under this Act, be deemed to be a Powers of Inspectors public servant within the meaning of the Indian Penal Code, and, subject to the control of the ²[Central Government], shall for that purpose have the following powers, namely—

- (a) to enter upon and inspect any railway or any rolling-stock used thereon ,
- (b) by an order in writing under his hand addressed to the railway administration, to require the attendance before him of any railway servant, and to require answers or returns to such inquiries as he thinks fit to make from such railway servant or from the railway administration,
- (c) to require the production of any book or document belonging to or in the possession or control of any railway administration (except a communication between a railway company and its legal advisers) which it appears to him to be necessary to inspect

6. A railway administration shall afford to the Inspector all reasonable facilities for performing the duties and exercising the powers imposed and conferred upon him by this Act Facilities to be afforded to Inspectors

¹ Cf the Regulation of Railways Act, 1871 (34 & 35 Vict , c 78), s 3

² Subs by the Indian Railways Act (Adaptation) Order, 1948 (G G O 36, dated 11th February, 1948), for "safety controlling authority".

³ Cf the Regulation of Railways Act, 1871 (34 & 35 Vict , c 78), s 4

(Chapter III —Construction and Maintenance of Works)

CHAPTER III

CONSTRUCTION AND MAINTENANCE OF WORKS

Authority of
railway ad-
ministrations
to execute all
necessary
works

17. (1) Subject to the provisions of this Act and, in the case of immoveable property not belonging to the railway administration, to the provisions of any enactment for the time being in force for the acquisition of land for public purposes and for companies, and subject also, in the case of a railway company, to the provisions of any contract between the company and the Government, a railway administration may, for the purpose of constructing a railway or the accommodation or other works connected therewith, and notwithstanding anything in any other enactment for the time being in force,—

- (a) make or construct in, upon, across, under or over any lands, or any streets, hills, valleys, roads, railways or tramways, or any rivers, canals, brooks, streams or other waters, or any drains, water-pipes, gas-pipes or telegraph lines, such temporary or permanent inclined planes, arches, tunnels, culverts, embankments, aqueducts, bridges, roads, ²[lines of railway], ways, passages, conduits, drains, piers, cuttings and fences as the railway administration thinks proper,
- (b) alter the course of any rivers, brooks, streams, or water-courses, for the purpose of constructing and maintaining tunnels, bridges, passages or other works over or under them, and divert or alter, as well temporarily as permanently, the course of any rivers, brooks, streams or watercourses or any roads, streets or ways, or raise or sink the level thereof, in order the more conveniently to carry them over or under or by the side of the railway, as the railway administration thinks proper,
- (c) make drains or conduits into, through or under any lands adjoining the railway for the purpose of conveying water from or to the railway,
- (d) erect and construct such houses, warehouses, offices and other buildings, and such yards, stations, wharves, engines, machinery, apparatus and other works and conveniences as the railway administration thinks proper,
- (e) alter, repair or discontinue such buildings, works and conveniences as aforesaid or any of them and substitute others in their stead, and
- (f) do all other acts necessary for making, maintaining, altering or repairing and using the railway

¹ Cf. the Railways Clauses Act, 1845 (8 & 9 Vict., c. 20), s. 16

² Ins. by the Indian Railways Act (1890), Amendment Act, 1896 (9 of 1896), s. 1

(Chapter III —Construction and Maintenance of Works)

(2) The exercise of the powers conferred on a railway administration by sub-section (1) shall be subject to the control of the ¹[general controlling authority]

8. A railway administration may, for the purpose of exercising the powers conferred upon it by this Act, alter the position of any pipe for the supply of gas, water or compressed air or the position of any electric wire or of any drain not being a main drain Alteration of pipes, wires and drains

Provided that—

(a) when the railway administration desires to alter the position of any such pipe, wire or drain, it shall give reasonable notice of its intention to do so, and of the time at which it will begin to do so, to the ²local authority or company having control over the pipe, wire or drain, or, when the pipe, wire or drain is not under the control of a local authority or company, to the person under whose control the pipe, wire or drain is ,

(b) a local authority, company or person receiving notice under proviso (a) may send a person to superintend the work, and the railway administration shall execute the work to the reasonable satisfaction of the person so sent and shall make arrangements for continuing during the execution of the work the supply of gas, water, compressed air or electricity or the maintenance of the drainage, as the case may be

³[8A. Nothing in the two last preceding sections shall authorise the doing of anything on or to any works, lands, or buildings vested in, or in the possession of, ~~His Majesty for the purposes of the Central Government~~ Protection for Government property without the consent of that Government, or the doing of anything on or to any works, lands or buildings vested in, or in the possession of, ~~His Majesty for the purposes of a Province~~ without the consent of the Provincial Government ⁴[or the doing of anything on or to any works, lands or buildings vested in, or in the possession of, the Government of an Acceding State without the consent of that Government]]

⁵9. (1) The ⁶[Central Government] may authorise any railway administration, in case of any slip or other accident happening or being apprehended to any cutting, embankment or other work under the control of the railway administration, to enter upon any lands adjoining its railway for the purpose of repairing or preventing the accident, and to do all such works as may be necessary for the purpose Temporary entry upon land for repairing or preventing accident

¹ Subs by the A O 1937, for "G G in C"

² For definition of "local authority", see s 3 (28) of the General Clauses Act, 1897 (10 of 1897)

³ Ins by the A O 1937

⁴ Ins by the Indian Railways (Amendment) Act, 1948 (21 of 1948), s 4

⁵ Cf the Railway Regulation Act, 1842 (5 & 6 Vict, c 55), s 14

⁶ Subs by the Indian Railways Act (Adaptation) Order, 1948 (G G O 36, dated 11th February, 1948), for "safety controlling authority"

(Chapter III —Construction and Maintenance of Works)

(2) In case of necessity the railway administration may enter upon the lands and do the works aforesaid without having obtained the previous sanction of the ¹[Central Government], but in such a case shall, within seventy-two hours after such entry, make a report to the ¹[Central Government], specifying the nature of the accident or apprehended accident, and of the works necessary to be done, and the power conferred on the railway administration by this sub-section shall cease and determine if the ¹[Central Government], after considering the report, considers that the exercise of the power is not necessary for the public safety

Payment of compensation for damage caused by lawful exercise of powers under the foregoing provisions of this Chapter

10. (1) A railway administration shall do as little damage as possible in the exercise of the powers conferred by any of ²[the foregoing provisions of this Chapter], and compensation shall be paid for any damage caused by the exercise thereof

(2) A suit shall not lie to recover such compensation, but in case of dispute the amount thereof shall, on application to the Collector, be determined and paid in accordance, so far as may be, ³[with the provisions of sections 11 to 15, both inclusive, sections 18 to 34, both inclusive, and sections 53 and 54 of the Land Acquisition Act, 1894, and the provisions of sections 51 and 52 of that Act shall apply to the award of compensation] 1 of 1894

Accommodation works

⁴11. (1) A railway administration shall make and maintain the following works for the accommodation of the owners and occupiers of lands adjoining the railway, namely —

(a) such and so many convenient crossings, bridges, arches, culverts and passages over, under or by the sides of, or leading to or from, the railway as may, in the opinion of the ~~State~~ ⁵[~~Provincial~~ Government], be necessary for the purpose of making good any interruptions caused by the railway to the use of the lands through which the railway is made, and

(b) all necessary arches, tunnels, culverts, drains, watercourses or other passages, over, or under or by the sides of the railway, of such dimensions as will, in the opinion of the ~~State~~ ⁵[~~Provincial~~ Government], be sufficient at all times to convey water as freely from or to the lands lying near or affected by the railway as before the making of the railway, or as nearly so as may be

¹ Subs by the Indian Railways Act (Adaptation) Order, 1948 (G G O 36, dated 11th February, 1948), for "safety controlling authority,"

² Subs by the A O 1937, for "the three last foregoing sections"

³ Subs by the Indian Railways Act (1890) Amendment Act, 1896 (9 of 1896), s 2, for "with the provisions of sections 11 to 15, both inclusive, and sections 18 to 42, both inclusive, of the Land Acquisition Act, 1870, and the provisions of sections 57 and 58 of that Act shall apply to the award of compensation"

⁴ Cf the Railways Clauses Act, 1845 (8 & 9 Vict, c 20), s 68

⁵ Subs by the A O 1937, for "G G in C"

(Chapter III.—Construction and Maintenance of Works)

(2) Subject to the other provisions of this Act, the work specified in clauses (a) and (b) of sub-section (1) shall be made during or immediately after the laying out or formation of the railway over the lands traversed thereby and in such manner as to cause as little damage or inconvenience as possible to persons interested in the lands or affected by the works

(3) The foregoing provisions of this section are subject to the following provisos, namely —

(a) a railway administration shall not be required to make any accommodation works in such a manner as would prevent or obstruct the working or using of the railway, or to make any accommodation works with respect to which the owners and occupiers of the lands have agreed to receive and have been paid compensation in consideration of their not requiring the works to be made,

¹(b) safe as hereinafter in this Chapter provided, a railway administration shall not, except on the requisition of the ²~~Provincial~~ ^{State} Government], be compelled to defray the cost of executing any further or additional accommodation works for the use of the owners or occupiers of the lands after the expiration of ten years from the date on which the railway passing through the lands was first opened for public traffic,

(c) where a railway administration has provided suitable accommodation for the crossing of a road or stream, and the road or stream is afterwards diverted by the act or neglect of the person having the control thereof, the administration shall not be compelled to provide other accommodation for the crossing of the road or stream

³(4) The ²~~Provincial~~ ^{State} Government] may appoint a time for the commencement of any work to be executed under sub-section (1), and if for fourteen days next after that time the railway administration fails to commence the work or, having commenced it, fails to proceed diligently to execute it in a sufficient manner, the ²~~Provincial~~ ^{State} Government] may execute it and recover from the railway administration the cost incurred by ⁴[it] in the execution thereof

⁵12. If an owner or occupier of any land affected by a railway considers the works made under the last foregoing section to be insufficient for the commodious use of the land, or if the ⁶~~Provincial~~ ^{State} Government] or a ^{Power for owner-occupier or local authority to}

¹ Cf the Railways Clauses Act, 1845 (8 & 9 Vict, c 20), s 78

² Subs by the A O 1937, for "G G in C"

³ Cf the Railways Clauses Act 1845 (8 & 9 Vict, c 20), s 70

⁴ Subs by the A O 1937, for "him"

⁵ Cf the Railways Clauses Act 1845 (8 & 9 Vict, c 20), s 71

⁶ Subs by the A O 1937, for "L G"

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cause additional accommodation works to be made

Fences, screens, gates and bars

local authority desires to construct a public road or other work across, under or over a railway, he or it, as the case may be, may at any time require the railway administration to make at his or its expense such further accommodation works as he or it thinks necessary and are agreed to by the railway administration or as, in case of difference of opinion, may be authorised by the ¹[~~general controlling authority~~ *Central Government*]

²13. The ³[Central Government] may require that, within a time to be specified in the requisition, or within such further time as ⁴[it] may appoint in this behalf,—

(a) boundary-marks or fences be provided or renewed by a railway administration for a railway or any part thereof and for roads constructed in connection therewith,

⁵(b) any works in the nature of a screen near to or adjoining the side of any public road constructed before the making of a railway be provided or renewed by a railway administration for the purpose of preventing danger to passengers on the road by reason of horses or other animals being frightened by the sight or noise of the rolling-stock moving on the railway,

⁶(c) suitable gates, chains, bars, stiles or hand-rails be erected or renewed by a railway administration at places where a railway crosses a public road on the level,

⁷(d) persons be employed by a railway administration to open and shut such gates, chains or bars

Over and under bridges

⁸14. (1) Where a railway administration has constructed a railway across a public road on the level, the ⁹[Central Government] may at any time, if it appears to ¹⁰[it] necessary for the public safety, require the railway administration, within such time as ¹¹[it] thinks fit, to carry the road either under or over the railway by means of a bridge or arch, with convenient ascents and descents and other convenient approaches, instead of crossing the road on the level, or to execute such other works as, in the circumstances of the case, may appear to the ¹²[Central Government] to be best adapted for removing or diminishing the danger arising from the level-crossing

¹³(2) The ¹⁴[Central Government] may require as a condition of making a requisition under sub-section (1), that the local authority, if any, which maintains the road, shall undertake to pay the whole of the cost to

¹ Subs by the A O 1937, for "G G in C"

² Cf the Railway Regulation Act, 1842 (5 & 6 Vict, c 55), s 10

³ Subs by the Indian Railways Act (Adaptation) Order, 1948 (G G O 36, dated 11th February, 1948) for "safely controlling authority"

⁴ Subs by the A O 1937, for "he"

⁵ Cf the Railways Clauses Act, 1845 (8 & 9 Vict, c 20), s 63

⁶ Cf the Railway Regulation Act, 1842 (5 & 6 Vict, c 55), s 9

⁷ Cf the Railways Clauses Act 1845 (8 & 9 Vict, c 20), s 48

⁸ Cf the Railways Clauses Act, 1863 (26 & 27 Vict, c 92), s. 7.

⁹ Subs by the A O 1937, for "him"

¹⁰ Cf the Railways Clauses Act, 1845 (8 & 9 Vict, c 20), s 46, and the Railway and Canal Traffic Act, 1888 (51 & 52 Vict c 25) s 16

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Chapter IV —Opening of Railways.)

the railway administration of complying with the requisition or such portion of the cost as the ¹[Central Government] thinks just

²15. (1) In either of the following cases, namely —

(a) where there is danger that a tree standing near a railway may fall on the railway so as to obstruct traffic,

(b) when a tree obstructs the view of any fixed signal, the railway administration may, with the permission of any Magistrate, fell the tree or deal with it in such other manner as will in the opinion of the railway administration avert the danger or remove the obstruction, as the case may be

Removal of trees dangerous to or obstructing the working of a railway

(2) In case of emergency the power mentioned in sub-section (1) may be exercised by a railway administration without the permission of a Magistrate

(3) Where a tree felled or otherwise dealt with under sub-section (1) or sub-section (2) was in existence before the railway was constructed or the signal was fixed, any Magistrate may, upon the application of the persons interested in the tree, award to those persons such compensation as he thinks reasonable

(4) Such an award, subject, where made in a presidency-town by any Magistrate other than the Chief Presidency Magistrate or where made elsewhere by any Magistrate other than the District Magistrate, to revision by the Chief Presidency Magistrate, or the District Magistrate, as the case may be, shall be final

(5) A Civil Court shall not entertain a suit to recover compensation for any tree felled or otherwise dealt with under this section

CHAPTER IV

OPENING OF RAILWAYS

³16. (1) A railway administration may, with the previous sanction of the ¹[Central Government], use upon a railway locomotive engines or other motive power, and rolling-stock to be drawn or propelled thereby

Right to use locomotives

(2) But rolling-stock shall not be moved upon a railway by steam or other motive power until such general rules for the railway as may be deemed to be necessary have been made, sanctioned and published under this Act

17. (1) Subject to the provisions of sub-section (2), a railway administration shall, one month at least before it intends to open any

Notice of intended opening of a railway

¹ See footnote ³ on pre-page

² Cf the Regulation of Railways Act, 1868 (31 & 32 Vict, c 119), s 24

³ Cf the Railways Clauses Act, 1845 (8 & 9 Vict, c 20), s 86

⁴ For notifications sanctioning the use of motive power and rolling-stock on railways, see different local R & O

(Chapter IV—Opening of Railways)

railway for the public carriage of passengers, give to the ¹[Central Government] notice in writing of its intention

(2) The ¹[Central Government] may, in any case, if ²[it] thinks fit, reduce the period of, or dispense with, the notice mentioned in sub-section (1)

Sanction of the Central Government a condition precedent to the opening of a railway

18. A railway shall not be opened for the public carriage of passengers until the ¹[Central Government], or an Inspector empowered by the ¹[Central Government] in this behalf, has by order sanctioned the opening thereof for that purpose

Procedure in sanctioning the opening of a railway

19. (1) The sanction of the ¹[Central Government] under the last foregoing section shall not be given until an Inspector has, after inspection of the railway, reported in writing to the ¹[Central Government]—

(a) that he has made a careful inspection of the railway and rolling-stock,

(b) that the moving and fixed dimensions prescribed by the ¹[Central Government] have not been infringed,

³(c) that the weight of rails, strength of bridges, general structural character of the works, and the size of and maximum gross load upon the axles of any rolling-stock are such as have been prescribed by the ¹[Central Government],

(d) that the railway is sufficiently supplied with rolling-stock,

(e) that general rules for the working of the railway when opened for the public carriage of passengers have been made, sanctioned and published under this Act, and

(f) that, in his opinion, the railway can be opened for the public carriage of passengers without danger to the public using it

²(2) If in the opinion of the Inspector the railway cannot be so opened without danger to the public using it, he shall state that opinion, together with the grounds therefor, to the ¹[Central Government], and the ¹[Central Government] may thereupon order the railway administration to postpone the opening of the railway

(3) An order under the last foregoing sub-section must set forth the requirements to be complied with as a condition precedent to the opening of the railway being sanctioned, and shall direct the postponement of the opening of the railway until those requirements have been complied with or the ¹[Central Government] is otherwise satisfied that the railway can be opened without danger to the public using it.

(4) The sanction given under this section may be either absolute or subject to such conditions as the ¹[Central Government] thinks necessary for the safety of the public

¹ See footnote ³ on p 378, *supra*

² Subs by the A O 1937, for "he"

³ Cf the Railway Regulation Act, 1842 (5 & 6 Vict, c 55), s 16

(Chapter IV —Opening of Railways)

(5) When sanction for the opening of a railway is given subject to conditions, and the railway administration fails to fulfil those conditions, the sanction shall be deemed to be void and the railway shall not be worked or used until the conditions are fulfilled to the satisfaction of the ¹[Central Government]

²20. (1) The provisions of sections 17, 18 and 19 with respect to the opening of a railway shall extend to the opening of the works mentioned in sub-section (2) when those works form part of, or are directly connected with, a railway used for the public carriage of passengers and have been constructed after the inspection which preceded the first opening of the railway. Application of the provisions of the three last foregoing sections to material alterations of a railway

(2) The works referred to in sub-section (1) are additional lines of railway, deviation lines, stations, junctions and crossings on the level, and any alteration or re-construction materially affecting the structural character of any work to which the provisions of sections 17, 18 and 19 apply or are extended by this section

21 When an accident has occurred resulting in a temporary suspension of traffic, and either the original line and works have been rapidly restored to their original standard, or a temporary diversion has been laid for the purpose of restoring communication, the original line and works so restored, or the temporary diversion, as the case may be, may, in the absence of the Inspector, be opened for the public carriage of passengers, subject to the following conditions, namely — Exceptional provision

- (a) that the railway servant in charge of the works undertaken by reason of the accident has certified in writing that the opening of the restored line and works, or of the temporary diversion, will not in his opinion be attended with danger to the public using the line and works or the diversion, and
- (b) that notice by telegraph of the opening of the line and works or the diversion shall be sent, as soon as may be, to the Inspector appointed for the railway

22. The ¹[Central Government] may make rules defining the cases in which, and in those cases the extent to which, the procedure prescribed in sections 17 to 20 (both inclusive) may be dispensed with Power to make rules with respect to the opening of railways

23. (1) When, after inspecting any open railway used for the public carriage of passengers, or any rolling-stock used thereon, an Inspector is of opinion that the use of the railway or of any specified rolling-stock will be attended with danger to the public using it, he shall state that opinion, together with the grounds therefor, to the ¹[Central Government], and the ¹[Central Government] may thereupon order that the Power to close an opened railway

¹ See footnote 3 on p 378 *supra*

² Cf the Regulation of Railways Act, 1871 (34 & 35 Vict, c 78), s 5

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railway be closed for the public carriage of passengers, or that the use of the rolling-stock so specified be discontinued, or that the railway or the rolling-stock so specified be used for the public carriage of passengers on such conditions only as the ¹[Central Government] may consider necessary for the safety of the public

²(2) An order under sub-section (1) must set forth the grounds on which it is founded

Re-opening
of a closed
railway

24. (1) When a railway has been closed under the last foregoing section, it shall not be re-opened for the public carriage of passengers until it has been inspected and its re-opening sanctioned, in accordance with the provisions of this Act

(2) When the ¹[Central Government] has ordered under the last foregoing section that the use of any specified rolling-stock be discontinued, that rolling-stock shall not be used until an Inspector has reported that it is fit for use and the ¹[Central Government] has sanctioned its use

(3) When the ¹[Central Government] has imposed under the last foregoing section any conditions with respect to the use of any railway or rolling-stock, those conditions shall be observed until they are withdrawn by the ¹[Central Government]

Delegation of
powers under
this Chapter
to Inspectors

25. (1) The ¹[Central Government] may, by general or special order, authorise the discharge of any of ³[its] functions under this Chapter by an Inspector, and may cancel any sanction or order given by an Inspector discharging any such function or attach thereto any condition which the ¹[Central Government] might have imposed if the sanction or order had been given by ⁴[itself]

(2) A condition imposed under sub-section (1) shall for all the purposes of this Act have the same effect as if it were attached to a sanction or order given by the ¹[Central Government]

CHAPTER V

⁵[TRAFFIC FACILITIES.]

* * *

26-40. [Relating to Railway Commissions] Rep by the A. O 1937

Bar of
jurisdiction
of ordinary

⁷41. Except as provided in this Act, no suit shall be instituted or proceeding taken for anything done or any omission made by a railway

¹ See footnote ³ on p 378 *supra*

² Cf the Railways Regulation Act, 1842 (5 & 6 Vict, c 55), s 16

³ Subs by the A O 1937, for "his"

⁴ Subs by the A O 1937, for "himself"

⁵ Subs by the Repealing and Amending Act, 1939 (34 of 1939), s 2 and Sch I, for the heading "Railway Commissions and Traffic Facilities"

⁶ The sub-heading "Railway Commissions" was rep, *ibid*

⁷ Cf the Railway and Canal Traffic Act, 1854 (17 & 18 Vict, c 31), s. 6.

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administration in violation or contravention of any provision of this Chapter ¹* * * * *

Courts in certain matters

2* * *

²42. (1) Every railway administration shall, according to its powers, afford all reasonable facilities for the receiving, forwarding and delivering of traffic upon and from the several railways belonging to or worked by it and for the return of rolling-stock

Duty of railway administrations to arrange for receiving and forwarding traffic without unreasonable delay and without partiality

4* * * * *

(3) A railway administration having or working railways which form part of a continuous line of railway communication, or having its terminus or station within one mile of the terminus or station of another railway administration, shall afford all due and reasonable facilities for receiving and forwarding by one of such railways all the traffic arriving by the other at such terminus or station, without any unreasonable delay, and without any such preference or advantage or prejudice or disadvantage ²[as is referred to in section 42A], and so that no obstruction may be offered to the public desirous of using such railways as a continuous line of communication, and so that all reasonable accommodation may by means of such railways be at all times afforded to the public in that behalf.

(4) The facilities to be afforded under this section shall include the due and reasonable receiving, forwarding and delivering by every railway administration, at the request of any other railway administration, of through traffic to and from the railway of any other railway administration at through rates

Provided as follows —

- (a) the railway administration requiring the traffic to be forwarded shall give written notice of the proposed through rate to each forwarding railway administration, stating both its amount and its apportionment and the route by which the traffic is proposed to be forwarded. The proposed through rate for animals or goods may be per truck or per maund,
- (b) each forwarding railway administration shall, within the prescribed period after the receipt of such notice, by written

¹ The words "or of any order made thereunder by the Commissioners or by a High Court" rep by the A O 1937

² The sub-heading "*Traffic Facilities*" was rep by Act 34 of 1939, s 2 and Sch I

³ Cf the Railways Clauses Act, 1845 (8 & 9 Vict, c 20), s 90, the Railway and Canal Traffic Act, 1854 (17 & 18 Vict, c 31), s. 2, and the Railway and Canal Traffic Act, 1888 (51 & 52 Vict, c 25), s 25

⁴ Sub-section (2) rep by the A O 1937 see now s 42A, *infra*

⁵ Cf the Railway and Canal Traffic Act, 1854 (17 & 18 Vict, c 31), s 1

⁶ Subs by the A O 1937, for "as aforesaid"

(Chapter V —Traffic Facilities)

notice inform the railway administration requiring the traffic to be forwarded whether it agrees to the rate, apportionment and route, and, if it has any objection, what the grounds of the objection are ,

(c) if at the expiration of the prescribed period no such objection has been sent by any forwarding railway administration, the rate shall come into operation at the expiration of that period ,

¹[(d) if an objection to the rate, apportionment or route has been sent within the prescribed period, the ²[Central Government] shall, on the request of any of the railway administrations, decide the matter ,]

(e) if the objection is to the granting of the rate or to the route, the ³[Central Government] shall consider whether the granting of the rate is a due and reasonable facility in the interests of the public, and whether, regard being had to the circumstances, the route proposed is a reasonable route, and shall allow or refuse the rate accordingly or fix such other rate as may seem to the ³[Central Government] to be just and reasonable ,

(f) if the objection is only to the apportionment of the rate, * * * * the rate shall come into operation at the expiration of the prescribed period, but the decision of the ³[Central Government] as to its apportionment shall be retrospective: in the case of any other objection the operation of the rate shall be suspended until the ³[Central Government] ⁵[makes its order] in the case. ,

(g) the ³[Central Government] in apportioning the through rate shall take into consideration all the circumstances of the case, including any special expense incurred in respect of the construction, maintenance or working of the route or any part of the route, as well as any special charges which any railway administration is entitled to make in respect thereof ,

(h) the ³[Central Government] shall not in any case compel any

¹ Subs by the A O 1937, for the original proviso (d).

² Subs by the Indian Railways Act (Adaptation) Order, 1948 (G G O 36, dated 11th February, 1948)

³ Subs by the Indian Railways Act (Adaptation) Order, 1948 (G G O 36, dated 11th February, 1948), for "Federal Railway Authority "

⁴ Words rep by the A O 1937

⁵ Subs by the Indian Railways Act (Adaptation) Order, 1948 (G G O 36, dated 11th February, 1948), for "make their order "

(Chapter V —Traffic Facilities)

railway administration to accept lower mileage rates than the mileage rates which the administration may for the time being legally be charging for like traffic carried by a like mode of transit on any other line of communication between the same points, being the points of departure and arrival of the through route ,

- ¹(i) subject to the foregoing provisions of this sub-section, the ²[Central Government] shall have full power to decide that any proposed through rate is due and reasonable notwithstanding that a less amount may be allotted to any forwarding railway administration out of the through rate than the maximum rate which the railway administration is entitled to charge, and to allow and apportion the through rate accordingly ,

- (j) the prescribed period mentioned in this sub-section shall be one month, or such longer period as the ²[Central Government] may by general or special order prescribe

³[(5) The powers conferred by this section on the ²[Central Government] shall, in relation to any dispute between two or more minor railways, be powers of the Provincial Government]

²⁸
⁴[42A. (1) A railway administration shall not make or give any undue or unreasonable preference or advantage to, or in favour of, any particular person or railway administration, or any particular description of traffic, in any respect whatsoever, or subject any particular person or railway administration or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever

Prohibition
of undue
preference

(2) Any complaint that a railway administration is contravening the provisions of this section shall be determined by the general controlling authority]

²⁹
⁴[42B. (1) The ²[Central Government] may by general or special order fix maximum and minimum rates for the whole or any part of a railway, other than a minor railway, and prescribe the conditions in which such rates will apply

Power of the
Central
Government
to fix maxi-
mum and
minimum
rates

(2) Any complaint that a railway administration is contravening any order issued by the ²[Central Government] in accordance with the pro-

¹ Cf the Regulation of Railways Act, 1873 (36 & 37 Vict, c 48), s 12

² Subs by the Indian Railways Act (Adaptation) Order 1948 (G G O 36, dated 11th February 1948), for "Federal Railway Authority"

³ Ins by the A O 1937

⁴ Ins by the Indian Railways (Amendment) Act, 1939 (33 of 1939), s 2.

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(2) The rules may provide that any person committing a breach of any of them shall be punished with fine which may extend to any sum not exceeding fifty rupees,¹ and that in the case of a rule made under clause (e) of sub-section (1), the railway servant shall forfeit a sum not exceeding one month's pay, which sum may be deducted by the railway administration from his pay

(3) A rule made under this section shall not take effect until it has received the sanction of ²[the general controlling authority and ³[where that authority is not the Central Government, also of] the ⁴[Central Government]] and been published in the ⁵[Official Gazette]

Provided that—

⁶[(a) where the ⁴[Central Government] is not ⁷* * * the general controlling authority, the ⁴[Central Government] shall not refuse its sanction unless it appears to it to be necessary so to do for the purpose of securing safety, and

(b) where the rule is in the terms of a rule which has already been published at length in the ⁵[Official Gazette], a notification in that Gazette referring to the rule already published and announcing the adoption thereof, shall be deemed a publication of a rule in the ⁵[Official Gazette] within the meaning of this sub-section

⁸[(4) Without prejudice to the provisions of section 21 of the General Clauses Act, 1897, any rule made under this section may be cancelled—

(a) where the general controlling authority concerned is the Central Government, by that Government, and

(b) where that authority is not the Central Government, by that authority with the sanction of the Central Government

Provided that the Central Government shall not refuse its sanction to the cancellation of any rule unless it appears to it to be necessary so to do for the purpose of securing safety]

¹ Cf the Canadian Railway Act, 1886 (49 Vict., c. 109), s. 86

² Subs. by the A. O. 1937, for "the G. G. in C."

³ Ins. by the Indian Railways Act (Adaptation) Order, 1948 (G. G. O. 36, dated 11th February 1948)

⁴ Subs. *ibid.*, for "safety controlling authority"

⁵ Subs. by the A. O. 1937, for "Gazette of India"

⁶ Ins. by the A. O. 1937

⁷ The words "the same as" were rep. by the Indian Railways Act (Adaptation) Order, 1948 (G. G. O. 36, dated 11th February 1948)

⁸ Subs. *ibid.*, for the former sub-section

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(5) Every rule purporting to have been made for any railway under section 8 of the ¹Indian Railways Act, 1879, and appearing from the ²[Official Gazette] to be intended to apply to the railway at the commencement of this Act, shall, notwithstanding any irregularity in the making or publication of the rule, be deemed to have been made and to have taken effect under this section

(6) Every railway administration shall keep at each station on its railway a copy of the general rules for the time being in force under this section on the railway, and shall allow any person to inspect it free of charge at all reasonable times

³48. Where two or more railway administrations whose railways have a common terminus or a portion of the same line of rails in common, or form separate portions of one continued line of railway communication are not able to agree upon arrangements for conducting at such common terminus, or at the point of junction between them, their joint traffic with safety to the public, the ⁴[Central Government], upon the application of either or any of the administrations, may decide the matters in dispute between them, so far as those matters relate to the safety of the public, and may determine whether the whole or what proportion of the expenses attending on such arrangements shall be borne by either or any of the administrations respectively

Disposal of differences between railways regarding conduct of joint traffic

⁵49. Any railway company, * * * * * may from time to time make and carry into effect agreements with ⁶[any ^{Central Government} general controlling authority] for the construction of rolling-stock, plant or machinery used on, or in connection with, railways, or for leasing or taking on lease any rolling-stock, plant, machinery or equipments required for use on a railway, or for the maintenance of rolling-stock

Agreements with any general controlling authority for construction or lease of rolling-stock

⁸50. Any railway company, * * * * * may from time to time

Powers of

¹ Rep by this Act

² Subs by the A O 1937, for "Gazette of India"

³ Cf the Railway Regulation Act, 1842 (5 & 6 Vict, c 55), s 11, and the Railways Clauses Act, 1863 (26 & 27 Vict, c 92), s 9

⁴ Subs by the Indian Railways Act (Adaptation) Order, 1948 (G G O 36, dated 11th February 1948), for "safety controlling authority"

⁵ Cf the Indian Guaranteed Railways Act, 1879 (42 & 43 Vict, c 4), s 4 (d)

⁶ The words "not being a company for which the Statute 42 and 43 Vict, Chap 41, provides" rep by the Indian Railways Act (Adaptation) Order, 1948 (G G O 36, dated 11th February 1948)

⁷ Subs by the A O 1937, for "the G G in C"

⁸ Cf the Indian Guaranteed Railways Act, 1879 (42 & 43 Vict, c 41), s 2; the Railways Clauses Act, 1945 (8 & 9 Vict, c 20), s 87, the Railways (Sales and Leases) Act, 1845 (8 & 9 Vict, c 96), and the Railways Clauses Act, 1863 (26 & 27 Vict, c 92), s 22

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railway
companies to
enter into
working
agreements

make with the ¹[Central Government], and carry into effect, or, with the sanction of the ¹[Central Government] make with any other railway administration, and carry into effect, any agreement² with respect to any of the following purposes, namely —

- (a) the working, use, management and maintenance of any railway ,
- (b) the supply of rolling-stock and machinery necessary for any of the purposes mentioned in clause (a) and of officers and servants for the conduct of the traffic of the railway ,
- (c) the payments to be made and the conditions to be performed with respect to such working, use, management and maintenance ,
- (d) the interchange, accommodation and conveyance of traffic being on, coming from or intended for, the respective railways of the contracting parties, and the fixing, collecting, apportionment and appropriation of the revenues arising from that traffic ,
- (e) generally, the giving effect to any such provisions or stipulations with respect to any of the purposes hereinbefore in this section mentioned as the contracting parties may think fit and mutually agree on

Provided that the agreement shall not affect any of the rates which the railway administrations, parties thereto, are, from time to time, respectively authorised to demand and receive from any person, and that every person shall, notwithstanding the agreement, be entitled to the use and benefit of the railways of any railway administrations, parties to the agreement, on the same terms and conditions, and on payment of the same rates, as he would be if the agreement had not been entered into

Establish-
ment of
ferries and
roadways
for accom-
modation of
traffic

³51. Any railway company, ⁴* * * * may from time to time exercise with the sanction of the ⁵~~Central Government~~ ^{general controlling authority} all or any of the following powers, namely —

- (a) it may establish, for the accommodation of the traffic of its railway, any ferry equipped with machinery and plant of good quality and adequate in quantity to work the ferry ,

¹ Subs by the Indian Railways Act (Adaptation) Order, 1948 (G G O 36, dated 11th February 1948), for "Federal Railway Authority"

² For instance of such agreement, see Mad R & O, Vol I

³ Cf the Indian Guaranteed Railways Act, 1879 (42 & 43 Vict, c 41), s 4

⁴ The words "not being a company for which the Statute 42 and 43 Vict, Chap 41, provides" rep by the Indian Railways Act (Adaptation) Order, 1948 (G G O 36, dated 11th February 1948)

⁵ Subs by the A O 1937, for "G G in C"

(Chapter VI—Working of Railways)

- (b) it may work for purposes other than the accommodation of the traffic of the railway any ferry established by it under this section ,
- (c) It may provide and maintain on any of its bridges, roadways for foot-passengers, cattle, carriages, carts or other traffic ;
- (d) it may construct and maintain roads for the accommodation of traffic passing to or from its railway ,
- (e) it may provide and maintain any means of transport which may be required for the reasonable convenience of passengers, animals or goods carried or to be carried on its railway ,
- (f) it may charge tolls on the traffic using such ferries, roadways, roads or means of transport as it may provide under this section, according to tariffs to be arranged from time to time with the sanction of the ¹[~~Provincial~~ ^{State} Government]

²[51A. (1) Any railway company, * * * may frame a scheme for the provision and maintenance of a motor transport or air-craft service for passengers, animals or goods with a terminus at or near a station on the railway owned or managed by such company

Additional power to provide and maintain transport services

⁴[(2) The scheme shall be submitted to the general controlling authority, which may sanction it, subject to such modifications and conditions as it may prescribe]

• (3) The scheme shall be published in the ⁵[Official Gazette] and thereupon the railway company shall, subject to sub-section (4), have the power to provide and maintain a service in accordance therewith

(4) In respect of any service provided and maintained by any railway company under this section,—

(a) the company shall be deemed not to be a railway administration for the purposes of this Act or of any other enactment affecting railways, and no property used exclusively for purposes of the service shall be deemed to be included in the railway or its rolling stock , and

(b) all enactments and rules for the time being in force relating to motor vehicles, air-craft and roads shall apply accordingly

¹ Subs by the A O 1937, for "G G in C"

² Ins by the Indian Railways (Amendment) Act, 1933 (19 of 1933), s 2

³ The words "not being a company for which the Statute 42 and 43 Vict, Chap 41, provides" rep by the Indian Railways Act (Adaptation) Order, 1948 (G G O 36, dated 11th February 1948)

⁴ Subs by the A O 1937, for the original sub-section (2)

⁵ Subs by the A O 1937, for "Gazette of India"

(Chapter VI—Working of Railways)

Central Government

(5) The ¹[~~general controlling authority~~] may, by notification in the ²[Official Gazette], after giving to the railway company six months' notice of ³[its] intention so to do, withdraw ³[its] sanction to any scheme sanctioned under sub-section (2) or may modify the scheme or impose further conditions on it]

Returns

⁴52. Every railway administration shall, in forms to be prescribed by the ⁵[~~general controlling authority~~], prepare, half-yearly or at such intervals as the ⁵[general controlling authority] may prescribe, such returns of its capital and revenue transactions and of its traffic as the ⁵[general controlling authority] may require, and shall forward a copy of such returns to the ⁵[~~general controlling authority~~] at such times as ⁶[it] may direct

*Carriage of Property*Maximum
load for
wagons

⁷53. (1) Every railway administration shall determine the maximum load for every wagon or truck in its possession, and shall exhibit the words or figures representing the load so determined in a conspicuous manner on the outside of every such wagon or truck

(2) Every person owning a wagon or truck which passes over a railway shall similarly determine and exhibit the maximum load for the wagon or truck

(3) The gross weight of any such wagon or truck bearing on the axles when the wagon or truck is loaded to such maximum load shall not exceed such limit as may be fixed by the ⁸[Central Government] for the class of axle under the wagon or truck

Power for
railway ad-
ministrations
to impose
conditions
for working
traffic

54. (1) Subject to the control of the ⁹[Central Government], a railway administration may impose conditions, not inconsistent with this Act or with any general rule thereunder, with respect to the receiving, forwarding or delivering of any animals or goods

(2) The railway administration shall keep at each station on its railway a copy of the conditions for the time being in force under sub-section (1) at the station, and shall allow any person to inspect it free of charge at all reasonable times

¹ Subs by the A O 1937, for "G G in C, after consultation with the L G of L Gs concerned"

² Subs by the A O 1937, for "Gazette of India"

³ Subs by the A O 1937, for "his"

⁴ Cf the Railway Regulation Act, 1840 (3 & 4 Vict, c 97), s 3, the Regulation of Railways Act, 1868 (31 & 32 Vict, c 119), ss 3 and 4, and the Regulation of Railways Act, 1871 (34 & 35 Vict, c 78), ss 9 and 10

⁵ Subs by the A O 1937, for "G G in C"

⁶ Subs by the A O 1937, for "he"

⁷ Cf the Railway Regulation Act, 1842 (5 & 6 Vict, c 55), s 16

⁸ Subs by the Indian Railways Act (Adaptation) Order, 1948 (G G O 36 dated the 11th February, 1948), for "safety controlling authority"

⁹ Subs *ibid*, for "Federal Railway Authority"

(Chapter VI —Working of Railways)

(3) A railway administration shall not be bound to carry any animal suffering from any infectious or contagious disorder

155. (1) If a person fails to pay on demand made by or on behalf of a railway administration any rate, terminal or other charge due from him in respect of any animals or goods, the railway administration may detain the whole or any of the animals or goods or, if they have been removed from the railway, any other animals or goods of such person then being in or thereafter coming into its possession Lien for rates, terminals and other charges

(2) When any animals or goods have been detained under sub-section (1), the railway administration may sell by public auction, in the case of perishable goods at once, and in the case of other goods or of animals on the expiration of at least fifteen days' notice of the intended auction, published in one or more of the local newspapers, or where there are no such newspapers, in such manner as the ²[Central Government] may prescribe, sufficient of such animals or goods to produce a sum equal to the charge, and all expenses of such detention, notice and sale, including, in the case of animals, the expenses of the feeding, watering and tending thereof

(3) Out of the proceeds of the sale the railway administration may retain a sum equal to the charge and the expenses aforesaid, rendering the surplus, if any, of the proceeds, and such of the animals or goods (if any) as remain unsold, to the person entitled thereto

(4) If a person on whom a demand for any rate, terminal or other charge due from him has been made fails to remove from the railway within a reasonable time any animals or goods which have been detained under sub-section (1) or any animals or goods which have remained unsold after a sale under sub-section (2), the railway administration may sell the whole of them and dispose of the proceeds of the sale as nearly as may be under the provisions of sub-section (3)

(5) Notwithstanding anything in the foregoing sub-sections, the railway administration may recover by suit any such rate, terminal or other charge as aforesaid or balance thereof

56. (1) When any animals or goods have come into the possession of a railway administration for carriage or otherwise and are not claimed by the owner or other person appearing to the railway administration to be entitled thereto, the railway administration shall, if such owner or person is known, cause a notice to be served upon him, requiring him to remove the animals or goods Disposal of unclaimed things on a railway

¹ Cf the Railways Clauses Act, 1845 (8 & 9 Vict., c 20), s 97

² Subs by the Indian Railways Act (Adaptation) Order, 1948 (G G O 36, dated 11th February 1948) for "Federal Railway Authority"

(Chapter VI —Working of Railways)

(2) If such owner or person is not known, or the notice cannot be served upon him, or he does not comply with the requisition in the notice, the railway administration may within a reasonable time, subject to the provisions of any other enactment for the time being in force, sell the animals or goods as nearly as may be under the provisions of the last foregoing section, rendering the surplus, if any, of the proceeds of the sale to any person entitled thereto

Power for
railway ad-
ministrations
to require
indemnity
on delivery
of goods in
certain cases

57. Where any animals, goods or sale-proceeds in the possession of a railway administration are claimed by two or more persons, or the ticket or receipt given for the animals or goods is not forthcoming, the railway administration may withhold delivery of the animals, goods or sale-proceeds until the person entitled in its opinion to receive them has given an indemnity, to the satisfaction of the railway administration, against the claims of any other person with respect to the animals, goods or sale-proceeds

Requisitions
for written
accounts of
description
of goods

58. (1) The owner or person having charge of any goods which are brought upon a railway for the purpose of being carried thereon, and the consignee of any goods which have been carried on a railway, shall, on the request of any railway servant appointed in this behalf by the railway administration, deliver to such servant an account in writing signed by such owner or person, or by such consignee, as the case may be, and containing such a description¹ of the goods as may be sufficient to determine the rate which the railway administration is entitled to charge in respect thereof

(2) If such owner, person or consignee refuses or neglects to give such an account, and refuses to open the parcel or package containing the goods in order that their description may be ascertained, the railway administration may, (a) in respect of goods which have been brought for the purpose of being carried on the railway, refuse to carry the goods unless in respect thereof a rate is paid not exceeding the highest rate which may be in force at the time on the railway for any class of goods or, (b) in respect of goods which have been carried on the railway, charge a rate not exceeding such highest rate

(3) If an account delivered under sub-section (1) is materially false with respect to the description of any goods to which it purports to relate, and which have been carried on the railway, the railway administration may charge in respect of the carriage of the goods a rate not exceeding double the highest rate which may be in force at the time on the railway for any class of goods.

(4) ¹If any difference arises between a railway servant and the owner or person having charge, or the consignee, of any goods which have been brought to be carried or have been carried on a railway, respecting the description of goods of which an account has been delivered under this section, the railway servant may detain and examine the goods

¹ Cf the Railways Clauses Act, 1845 (8 & 9 Vict, c 20), s 101

(Chapter VI —Working of Railways.)

(5) If it appears from the examination that the description of the goods is different from that stated in an account delivered under sub-section (1), the person who delivered the account, or, if that person is not the owner of the goods, then that person and the owner jointly and severally, shall be liable to pay to the railway administration the cost of the detention and examination of the goods, and the railway administration shall be exonerated from all responsibility for any loss which may have been caused by the detention or examination thereof

(6) If it appears that the description of the goods is not different from that stated in an account delivered under sub-section (1), the railway administration shall pay the cost of the detention and examination, and be responsible to the owner of the goods for any such loss as aforesaid

59. (1) No person shall be entitled to take with him, or to require a railway administration to carry, any dangerous or offensive goods upon a railway Dangerous or
offensive
goods

(2) No person shall take any such goods with him upon a railway without giving notice of their nature to the station-master or other railway servant in charge of the place where he brings the goods upon the railway, or shall tender or deliver any such goods for carriage upon a railway without distinctly marking their nature on the outside of the package containing them or otherwise giving notice in writing of their nature to the railway servant to whom he tenders or delivers them

(3) Any railway servant may refuse to receive such goods for carriage, and, when such goods have been so received without such notice as is mentioned in ¹[sub-section (2)] having to his knowledge been given, may refuse to carry them or may stop their transit

(4) If any railway servant has reason to believe any such goods to be contained in a package with respect to the contents whereof such notice as is mentioned in sub-section (2) has not to his knowledge been given, he may cause the package to be opened for the purpose of ascertaining its contents

(5) Nothing in this section shall be construed to derogate from the Indian Explosives Act, 1884, or any rule under that Act, and nothing in sub-sections (1), (3) and (4) shall be construed to apply to any goods tendered or delivered for carriage by order or on behalf of the Government or to any goods which an officer, soldier, sailor, ²[airman] or police-officer or ³[a member of the Indian Territorial Force, ~~or of the Auxiliary Force, India,~~] may take with him upon a railway in the course of his employment or duty as such

¹ Subs by the Indian Railways Act (1890) Amendment Act, 1896 (9 of 1896), s 3 for "sub-section (1)"

² Ins by s 2 and Sch I of the Repealing and Amending Act, 1927 (10 of 1927)

³ Subs by s 2 and Sch I of the Repealing and Amending Act, 1923 (11 of 1923) for "a person enrolled as a volunteer under the Indian Volunteers Act, 1869"

(Chapter VI—Working of Railways)

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¹60. At every station at which a railway administration quotes a rate to any other station for the carriage of traffic other than passengers and their luggage, the railway servant appointed by the administration to quote the rate shall, at the request of any person, show to him at all reasonable times, and without payment of any fee, the rate books or other documents in which the rate is authorised by the administration or administrations concerned

positions
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²61. (1) Where any charge is made by and paid to a railway administration in respect of the carriage of goods over its railway, the administration shall, on the application of the person by whom or on whose behalf the charge has been paid, render to the applicant an account showing how much of the charge comes under each of the following heads, namely —

(a) the carriage of the goods on the railway ,

(b) terminals ,

(c) demurrage , and

³(d) collection, delivery and other expenses ,

but without particularizing the several items of which the charge under each head consists

(2) The application under sub-section (1) must be in writing and be made to the railway administration within one month after the date of the payment of the charge by or on behalf of the applicant, and the account must be rendered by the administration within two months after the receipt of the application

Carriage of Passengers

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⁴62. The ⁵[Central Government] may require any railway administration to provide and maintain in proper order, in* any train worked by it which carries passengers, such efficient means of communication between the passengers and the railway servants in charge of the train as the ⁵[Central Government] has approved

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63. Every railway administration shall fix, subject to the approval of the ⁶[~~general controlling authority~~ ^{Central Govt.}], the maximum number of passengers which may be carried in each compartment of every description of carriage, and shall exhibit the number so fixed in a conspicuous manner inside or outside each compartment, in English or in one or more of the vernacular languages in common use in the territory traversed by the railway, or both in English and in one or more of such vernacular languages as the ⁶[~~general controlling authority~~ ^{Central Govt.}], after consultation with the railway administration, may determine

¹ Cf the Regulation of Railways Act, 1873 (35 & 37 Vict, c 48), s 14, and the Railway and Canal Traffic Act, 1888 (51 & 52 Vict, c 25), s 33

² Cf the Regulation of Railways Act, 1868 (31 & 32 Vict, c 119), s 17

³ Cf the Regulation of Railways Act, 1873 (36 & 37 Vict, c 48), s 14

⁴ Cf the Regulation of Railways Act, 1868 (31 & 32 Vict, c 119), s 22

⁵ Subs by the Indian Railways Act (Adaptation) Order, 1948 (G G O 36, dated 11th February 1948), for "safety controlling authority"

⁶ Subs by the A O 1937, for "G G in C"

(Chapter VI—Working of Railways)

64. (1) On and after the first day of January 1891, every railway administration shall, in every train carrying passengers, reserve for the exclusive use of females one compartment at least of the lowest class of carriage forming part of the train Reservation of compartments for females

(2) One such compartment so reserved shall, if the train is to run for a distance exceeding fifty miles, be provided with a closet.

65. Every railway administration shall cause to be posted in a conspicuous and accessible place at every station on its railway, in English and in a vernacular language in common use in the territory where the station is situate, a copy of the time-tables for the time being in force on the railway, and lists of the fares chargeable for travelling from the station where the lists are posted to every place for which card-tickets are ordinarily issued to passengers at that station Exhibition of time-tables and tables of fares at stations

66. (1) Every person desirous of travelling on a railway shall, upon payment of his fare, be supplied with a ticket, specifying the class of carriage for which, and the place from and the place to which, the fare has been paid, and the amount of the fare Supply of tickets on payment of fares

(2) The matters required by sub-section (1) to be specified on a ticket shall be set forth—

(a) if the class of carriage to be specified thereon is the lowest class, then in a vernacular language in common use in the territory traversed by the railway, and

(b) if the class of carriage to be so specified is any other than the lowest class, then in English.

67. (1) Fares shall be deemed to be accepted, and tickets to be issued, subject to the condition of there being room available in the train for which the tickets are issued Provision for case in which tickets have been issued for trains not having room available for additional passengers

(2) A person to whom a ticket has been issued and for whom there is not room available in the train for which the ticket was issued shall on returning the ticket within three hours after the departure of the train be entitled to have his fare at once refunded.

(3) A person for whom there is not room available in the class of carriage for which he has purchased a ticket and who is obliged to travel in a carriage of a lower class shall be entitled on delivering up his ticket to a refund of the difference between the fare paid by him and the fare payable for the class of carriage in which he travelled

68. ¹[(1)] No person shall, without the permission of a railway servant, enter ²[or remain in] any carriage on a railway for the purpose of travelling therein as a passenger unless he has with him a proper pass or ticket. Prohibition against travelling without pass or ticket

¹ S 68 was re-numbered as sub-section (1) of that section and sub-section (2) inserted by the Indian Railways (Amendment) Act, 1941 (6 of 1941), s 2

² Ins *ibid*

*(Chapter VI—Working of Railways Chapter VIA—Limitation
of Employment of Railway Servants)*

¹[(2) A railway servant when granting the permission referred to in sub-section (1) shall ordinarily, if empowered in this behalf by the railway administration, grant to the passenger a certificate that the passenger has been permitted to travel in such carriage upon condition that he subsequently pays the fare payable for the distance to be travelled]

hibition
nd surrender
f passes
nd tickets

69. Every passenger by railway shall, on the requisition of any railway servant appointed by the railway administration in this behalf, present his pass or ticket to the railway servant for examination, and at or near the end of the journey for which the pass or ticket was issued, or, in the case of a season pass or ticket, at the expiration of the period for which it is current, deliver up the pass or ticket to the railway servant

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70. A return ticket or season ticket shall not be transferable and may be used only by the person for whose journey to and from the places specified thereon it was issued

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71. (1) A railway administration may refuse to carry, except in accordance with the conditions prescribed under section 47, sub-section (1), clause (d), a person suffering from any infectious or contagious disorder

(2) A person suffering from such a disorder shall not enter or travel upon a railway without the special permission of the station-master or other railway servant in charge of the place where he enters upon the railway

(3) A railway servant giving such permission as is mentioned in sub-section (2) must arrange for the separation of the person suffering from the disorder from other persons being or travelling upon the railway

2[CHAPTER VIA

LIMITATION OF EMPLOYMENT OF RAILWAY SERVANTS.

Definitions

71A. In this Chapter, unless there is anything repugnant in the subject or context,—

(a) the employment of a railway servant is said to be “essentially intermittent” when it has been declared to be so by the authority empowered in this behalf, on the ground that it involves long periods of inaction, during which the railway servant is on duty but is not called upon to display either physical activity or sustained attention; and

(b) except in section 71B, a “railway servant” means a railway servant to whom this Chapter applies

¹ S 68 was re-numbered as sub-section (1) of that section and sub-section (2) inserted by the Indian Railways (Amendment) Act, 1941 (6 of 1941), s 2

² Ch VIA was ins by the Indian Railways (Amendment) Act, 1930 (14 of 1930), s. 2 For Statement of Objects and Reasons, see Gazette of India, 1929, Pt V, p 147, for Report of the Select Committee, see *ibid*, 1930, Pt V, p. 56

(Chapter VIA —Limitation of Employment of Railway Servants)

71B. This Chapter applies only to such railway servants or classes of railway servants as the ¹[Central Government] may, by rules made under section 71E, prescribe Application of Chapter VIA

71C. (1) A railway servant, other than a railway servant whose employment is essentially intermittent, shall not be employed for more than sixty hours a week on the average in any month Limitation of hours of work

(2) A railway servant whose employment is essentially intermittent shall not be employed for more than eighty-four hours in any week

(3) Subject to rules made under section 71E, temporary exemptions of railway servants from the provisions of sub-section (1) and sub-section (2) may be made—

(a) when such temporary exemptions are necessary to avoid serious interference with the ordinary working of the railway, in cases of accident, actual or threatened, or when urgent work is required to be done to the railway or to rolling-stock, or in any emergency which could not have been foreseen or prevented, and

(b) in cases of exceptional pressure of work not falling within the scope of clause (a)

Provided that a railway servant exempted under clause (b) shall be paid for overtime at not less than one and a quarter times his ordinary rate of pay

71D. (1) A railway servant shall be granted, each week commencing on Sunday, a rest of not less than twenty-four consecutive hours Grant of periodical rest

Provided that this sub-section shall not apply to a railway servant whose employment is essentially intermittent, or to a railway servant to whom sub-section (2) applies

(2) The ¹[Central Government] may, by rules made under section 71E, specify the railway servants or classes of railway servants to whom periods of rest may be granted on a scale less than that laid down in sub-section (1), and may prescribe the periods of rest to be granted to such railway servants

(3) Subject to rules made under section 71E, temporary exemptions from the grant of periods of rest may be made in the cases or circumstances specified in sub-section (3) of section 71C

Provided that a railway servant shall, as far as may be possible, be granted compensatory periods of rest for the periods he has foregone

71E. (1) The ¹[Central Government] may make rules—

(a) prescribing the railway servants or classes of railway servants to whom this Chapter shall apply ,

Power to make rules

¹ Subs by the A O 1937, for "G. G in C"

(Chapter VII—Responsibility of Railway Administrations as Carriers)

tration caused its value and contents to be declared or declared them at the time of the delivery of the parcel or package for carriage by railway, and, if so required by the administration, paid or engaged to pay a percentage on the value so declared by way of compensation for increased risk

(2) When any parcel or package of which the value has been declared under sub-section (1) has been lost or destroyed or has deteriorated, the compensation recoverable in respect of such loss, destruction or deterioration shall not exceed the value so declared, ~~and the burden of proving the value so declared to have been the true value shall, notwithstanding anything in the declaration, lie on the person claiming the compensation~~

(3) A railway administration may make it a condition of carrying a parcel declared to contain any article mentioned in the second schedule that a railway servant authorised in this behalf has been satisfied by examination or otherwise that the parcel actually contains the article declared to be therein

76. In any suit against a railway administration for compensation for loss, destruction or deterioration of animals or goods delivered to a railway administration for carriage by railway, it shall not be necessary for the plaintiff to prove how the loss, destruction or deterioration was caused

77. A person shall not be entitled to a refund of an overcharge in respect of animals or goods carried by railway or to compensation for the loss, destruction or deterioration of animals or goods delivered to be so carried, unless his claim to the refund or compensation has been preferred in writing by him or on his behalf to the railway administration within six months from the date of the delivery of the animals or goods for carriage by railway

78. Notwithstanding anything in the foregoing provisions of this Chapter, a railway administration shall not be responsible for the loss, destruction or deterioration of any goods with respect to the description of which an account materially false has been delivered under sub-section (1) of section 58 if the loss, destruction or deterioration is in any way brought about by the false account, nor in any case for an amount exceeding the value of the goods if such value were calculated in accordance with the description contained in the false account

79. Where an officer, soldier, ¹[sailor], ²[airman] or follower, while being or travelling as such on duty upon a railway belonging to, and worked by, the Government ³~~[or an Acceding State]~~, loses his life or receives any personal injury in such circumstances that, if he were not an officer, soldier, ¹[sailor], ²[airman] or follower being or travelling as such on duty upon the railway, compensation would be payable under ⁴Act No. XIII of 1855 or to him, as the case may be, the form and amount of the compensation to be made in respect of the loss of his life or his injury shall, where there is any provision in this behalf in the military, ¹[naval] ²[or air-force]

¹ Ins by the Amending Act, 1934 (35 of 1934), s 2 and Sch

² Ins by the Repealing and Amending Act, 1927 (10 of 1927), s. 2 and Sch I

³ Ins by the Indian Railways (Amendment) Act, 1948 (21 of 1948), s 5

⁴ The Indian Fatal Accidents Act, 1855

(Chapter VII—Responsibility of Railway Administrations as Carriers)

regulations to which he was immediately before his death, or is, subject, be determined in accordance with those regulations, and not otherwise

80. Notwithstanding anything in any agreement purporting to limit the liability of a railway administration with respect to traffic while on the railway of another administration, a suit for compensation for loss of the life of, or personal injury to, a passenger, or for loss, destruction or deterioration of animals or goods where the passenger was or the animals or goods were booked through over the railways of two or more railway administrations, may be brought either against the railway administration from which the passenger obtained his pass or purchased his ticket, or to which the animals or goods were delivered by the consignor thereof, as the case may be, or against the railway administration on whose railway the loss, injury, destruction or deterioration occurred

Suits for compensation for injury to through-booked traffic

81. [*Limitation of liability of railway administration in respect of traffic on inland waters by vessel not being part of railway*] Rep by the Indian Railways Act (1890) Amendment Act, 1896 (IX of 1896), s 5

82. (1) When a railway administration contracts to carry passengers, animals or goods partly by railway and partly by sea, a condition exempting the railway administration from responsibility for any loss of life, personal injury or loss of or damage to animals or goods which may happen during the carriage by sea from the act of God, the King's enemies, fire, accidents from machinery, boilers and steam and all and every other dangers and accidents of the seas, rivers, and navigation of whatever nature and kind soever shall, without being expressed, be deemed to be part of the contract, and, subject to that condition, the railway administration shall, irrespective of the nationality or ownership of the ship used for the carriage by sea, be responsible for any loss of life, personal injury or loss of or damage to animals or goods which may happen during the carriage by sea, to the extent to which it would be responsible under the ¹Merchant Shipping Act, 1854, and the ²Merchant Shipping Act Amendment Act, 1862, if the ship were registered under the former of those Acts and the railway administration were owner of the ship, and not to any greater extent.

Limitation of liability of railway administration in respect of accidents at sea

(2) The burden of proving that any such loss, injury or damage as is mentioned in sub-section (1) happened during the carriage by sea shall lie on the railway administration

82A. (1) When in the course of working a railway an accident occurs, being either a collision between trains of which one is a train carrying passengers or the derailment of or other accident to a train or any part of a train carrying passengers, then, whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a person who has been injured or has suffered loss to

Liability of Railway Administration in respect of accidents to trains carrying passengers

¹ Cf the Regulation of Railways Act, 1868 (31 & 32 Vict, c 119), s 14, and the Regulation of Railways Act, 1871 (34 & 35 Vict, c 78), s. 12

² See now the Merchant Shipping Act, 1894 (57 & 58 Vict, c 60).

³ Ins by the Indian Railways (Amendment) Act, 1943 (3 of 1943), s 2

(Chapter IX—Penalties and Offences)

penalty for
travelling
on of
section 16,
19, 20, 21,
24

88. If a railway company moves any rolling-stock upon a railway by steam or other motive power in contravention of section 16, sub-section (2), or opens or uses any railway or work in contravention of section 18, section 19, section 20 or section 21, or re-opens any railway or uses any rolling-stock in contravention of section 24, it shall forfeit to the ¹[Central Government] the sum of two hundred rupees for every day during which the motive power, railway, work or rolling-stock is used in contravention of any of those sections

penalty for
having
certain docu-
ments kept
exhibited
at stations
under section
or 65

89. If a railway company fails to comply with the provisions of ²* * * section 54, sub-section (2), or section 65, with respect to the books or other documents to be kept open to inspection or conspicuously posted at stations on its railway, it shall forfeit to the ³[Central Government] the sum of fifty rupees for every day during which the default continues

penalty for
making
rules as
required by
section 47

90. If the railway company fails to comply with the provisions of section 47 with respect to the making of general rules ⁴[and the keeping thereof open to inspection] it shall forfeit to the ⁵[general controlling authority] the sum of fifty rupees for every day during which the default continues

⁴[Provided that ⁶[where the general controlling authority is not the Central Government] the ¹[Central Government] may take proceedings for the recovery of the said penalty if in the opinion of the ¹[Central Government] the default is a default which relates to safety]

penalty for
failure to
comply with
section
under sec-
tion 48

⁹¹. If a railway company refuses or neglects to comply with any decision of the ¹[Central Government] under section 48, it shall forfeit to the ¹[Central Government] the sum of two hundred rupees for every day during which the refusal or neglect continues

penalty for
failure to
submit
returns under
section 52
85

92. If a railway company fails to comply with the provisions of section 52 or section 85 with respect to the submission of any return, it shall forfeit to the ⁵~~[authority to which the return should have been submitted]~~ ^{Central Govt.} the sum of fifty rupees for every day during which the default continues after the fourteenth day from the date prescribed for the submission of the return

¹ Subs by the Indian Railways Act (Adaptation) Order, 1948 (G. G. O. 36 dated 11th February 1948), for "safety controlling authority"

² The words "section 47, sub-section (6)" rep by the A. O. 1937

³ Subs by the Indian Railways Act (Adaptation) Order, 1948 (G. G. O. 36 dated 11th February 1948), for "Federal Railway Authority"

⁴ Ins by the A. O. 1937

⁵ Subs by the A. O. 1937, for "Govt."

⁶ Subs by the Indian Railways Act (Adaptation) Order, 1948 (G. G. O. 36 dated 11th February, 1948), for "where the safety controlling authority is different from the general controlling authority"

⁷ Cf the Railway Regulation Act, 1842 (5 & 6 Vict, c. 55), s 11

(Chapter IX—Penalties and Offences)

93. If a railway company contravenes the provisions of section 53 or section 63, with respect to the maximum load to be carried in any wagon or truck, or the maximum number of passengers to be carried in any compartment, or the exhibition of such load on the wagon or truck or of such number in or on the compartment, or knowingly suffers any person owning a wagon or truck passing over its railway to contravene the provisions of the former of those sections, it shall forfeit to the ¹[appropriate authority] the sum of twenty rupees for every day during which either section is contravened

Penalty for neglect of provisions of section 53 or 63 with respect to carrying capacity of rolling-stock

²[In this section "the appropriate authority" means, in relation to a contravention with respect to the maximum load to be carried in any wagon or truck, the ³[Central Government], and, in relation to any other contravention, the general controlling authority]

94. If a railway company fails to comply with any requisition of the ¹[Central Government] under section 62 for the provision and maintenance in proper order, in any train worked by it, which carries passengers, of such efficient means of communication as the ¹[Central Government] has approved, it shall forfeit to the ³[Central Government] the sum of twenty rupees for each train run in disregard of the requisition

Penalty for failure to comply with requisition under section 62 for maintenance of means of communication between passengers and railway servants

95. If a railway company fails to comply with the requirements of section 64 with respect to the reservation of compartments for females or the provision of closets therein, it shall forfeit to the ¹[general controlling authority] the sum of twenty rupees for every train in respect of which the default occurs.

Penalty for failure to reserve compartments for females under section 64

96. If a railway company omits to give such notice of an accident as is required by section 83 and the rules for the time being in force under section 84, it shall forfeit to the ³[Central Government] the sum of one hundred rupees for every day during which the omission continues.

Penalty for omitting to give the notices of accidents required by section 83 and under section 84

97. (1) When a railway company has through any act or omission forfeited any sum * * * under the foregoing provisions of this Chapter, the sum shall be recoverable by suit in the District Court having jurisdiction in the place where the act or omission or any part thereof occurred.

Recovery of penalties

¹ Subs by the A O 1937, for "Govt"

² Ins. by the A O 1937

³ Subs by the Indian Railways Act (Adaptation) Order, 1948 (G G O 36, dated 11th February 1948), for "safety controlling authority".

⁴ Cf the Regulation of Railways Act, 1868 (31 & 32 Vict, c 119), s 22

⁵ The words "to the Govt" rep by the A O, 1937.

(Chapter IX—Penalties and Offences)

¹[(2) Nothing in this Chapter shall be construed as requiring any authority to recover any penalty in any case in which it thinks it proper to refrain from so doing]

Alternative
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character of
medies
furnished by
the fore-
going provi-
sions of
this Chapter

98. Nothing ²[in the foregoing provisions of this Chapter] shall be construed to preclude the ³[~~appropriate authority~~ ^{Central Govt}] from resorting to any other mode of proceeding instead of, or in addition to, such a suit as is mentioned in the last foregoing section, for the purpose of compelling a railway company to discharge any obligation imposed upon it by this Act

Offences by Railway Servants

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⁴99. If a railway servant whose duty it is to comply with the provisions of section 60 negligently or wilfully omits to comply therewith, he shall be punished with fine which may extend to twenty rupees

100. If a railway servant is in a state of intoxication while on duty, he shall be punished with fine which may extend to fifty rupees, or, where the improper performance of the duty would be likely to endanger the safety of any person travelling or being upon a railway, with imprisonment for a term which may extend to one year, or with fine, or with both.

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⁵101. If a railway servant, when on duty, endangers the safety of any person—

(a) by disobeying any general rule made, sanctioned, published and notified under this Act, or

(b) by disobeying any rule or order which is not inconsistent with any such general rule, and which such servant was bound by the terms of his employment to obey, and of which he had notice, or

(c) by any rash or negligent act or omission,
he shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to five hundred rupees, or with both

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102. If a railway servant compels or attempts to compel, or causes, any passenger to enter a compartment which already contains the maximum number of passengers exhibited therein or thereon under section 63, he shall be punished with fine which may extend to twenty rupees

¹ Subs by the A O 1937, for the original sub-sections (2) and (3)

² Subs by the Repealing and Amending Act, 1939 (34 of 1939), s 2 and Sch I, for "in those provisions".

³ Subs by the A O 1937, for "Govt"

⁴ Cf the Railway Regulation Act, 1842 (5 & 6 Vict, c 55), s 17

⁵ Cf the Railway Regulation Act, 1840 (3 & 4 Vict, c 97), ss 13 and 14, and the Railway Regulation Act, 1842 (5 & 6 Vict, c 55), s 17

For rules made by the Govt of Bengal under s 46 (2) of the Police Act, 1861 (5 of 1861), for the guidance of Railway Police as to arrest and Prosecution for offences under this section, see Calcutta Gazette, 1904, Pt I, p 884.

(Chapter IX —Penalties and Offences)

103. If a station-master or a railway servant in charge of a section of a railway omits to give such notice of an accident as is required by section 83 and the rules for the time being in force under section 84, he shall be punished with fine which may extend to fifty rupees

Omission to
give notice of
accident

¹104. If a railway servant unnecessarily—

(a) allows any rolling-stock to stand across a place where the railway crosses a public road on the level, or

Obstructing
level-cross-
ings

(b) keeps a level-crossing closed against the public,
he shall be punished with fine which may extend to twenty rupees

²105. If any return which is required by this Act is false in any particular to the knowledge of any person who signs it, that person shall be punished with fine which may extend to five hundred rupees, or with imprisonment which may extend to one year, or with both

False
returns

Other Offences

³106. If a person requested under section 58 to give an account with respect to any goods gives an account which is materially false, he and, if he is not the owner of the goods, the owner also shall be punished with fine which may extend to ~~ten~~^{five} rupees for every maund or part of a maund of the goods, and the fine shall be in addition to any rate or other charge to which the goods may be liable

Giving false
account of
goods

⁴107. If in contravention of section 59 a person takes with him any dangerous or offensive goods upon a railway, or tenders or delivers any such goods for carriage upon a railway, he shall be punished with fine which may extend to five hundred rupees, and shall also be responsible for any loss, injury or damage which may be caused by reason of such goods having been so brought upon the railway

Unlawfully
bringing
dangerous or
offensive
goods upon a
railway

⁵108. If a passenger, without reasonable and sufficient cause, makes use of or interferes with any means provided by a railway administration for communication between passengers and the railway servants in charge of a train, he shall be punished with fine which may extend to fifty rupees.

Needlessly
interfering
with means
of communi-
cation in a
train.

109. (r) If a passenger, having entered a compartment which is reserved by a railway administration for the use of another passenger, or which already contains the maximum number of passengers exhibited therein

Entering
compartment
reserved or
already full
or resisting

¹ Cf the Railway Clauses Act, 1863 (26 & 27 Vict., c 92), s 5

² Cf the Regulation of Railways Act, 1871 (34 & 35 Vict., c 78), s 10

³ Cf the Railways Clauses Act, 1845 (8 & 9 Vict., c 20), ss. 99 and 152, respectively

⁴ Cf the Regulation of Railways Act, 1868 (31 & 32 Vict., c 119), s 22